

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1733/KOL/2025
(Assessment Year: 2013-14)**

Krypton Distributors LLP
(Earlier known as Krypton
Distributors P. Ltd.)
Flat No.1A, 1, Abdul Rasul
Avenue, Kalighat,
Kolkata-700026,
West Bengal

(Appellant)

Vs.

ITO, Ward 12(1),
Aaykar Bhawan, P-7,
Chowringhee Square,
Kolkata-700069, West Bengal

(Respondent)

PAN No. AADCK5298G

Assessee by : Shri Manoj Katuruka, AR
Revenue by : Shri Pankaj Pandey, DR

Date of hearing: 13.11.2025
Date of pronouncement: 02.12.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 05.06.2025 for the AY 2013-14.

2. At the time of hearing the assessee pressed ground no.3 with is extracted below:-

"3. That on the facts and in the circumstances of the case the action of the CIT (A) upholding the action of the AO in making addition of ₹80,00,000/- u/s 68 of the Act, is contrary to the material evidences on record and the addition is erroneous, arbitrary, excessive and illegal."

2.1. The facts in brief are that the assessee filed the return of income u/s 139(1) of the Act. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act, after the learned AO received information from investigation wing that the assessee is a beneficiary of bogus unsecured loans through bank account of M/s Startrack Vinimay Pvt. Ltd. amounting to ₹80 lacs. Accordingly, the learned AO issued notice u/s 148 of the Act to the assessee and the assessee complied with the said notice by filing the return of income. The learned AO observed that the assessee has received ₹80 lacs from the M/s Startrack Vinimay Pvt. Ltd. and thereafter advanced the money to M/s Sadhani Trading Company. Finally, the addition was made to the income of the assessee u/s 68 of the Act.

2.2. In the appellate proceedings, the learned CIT (A) also confirmed the order of the learned AO on this issue by holding that the transactions entered into by the assessee with M/s Startrack Vinimay Pvt. Ltd. and M/s Sadhani Trading Company are suspicious transactions and accordingly, upheld the order of the learned AO.

2.3. After hearing the rival contentions and perusing the materials available on record, we find that in this case the assessee purchased 40 lacs 2% non-speculative redeemable preference shares of M/s Easter (India) Chemicals Ltd. for a total consideration of ₹80 lacs in the earlier assessment years. During the year these shares were of M/s Easter (India) Chemicals Ltd. sold by the assessee to M/s Startrack Vinimay Pvt. Ltd. for a consideration of ₹80 lacs which was received and credited in the bank account of the assessee. The assessee has also furnished a valuation report dated 11.07.2012, for determining the FMV of the preference shares. We note from the copy of the bank statement that the assessee received consideration

of ₹80,00,000/- on 27.07.2012 and thereafter the advanced loan of the same amount on 30.07.2012, to M/s Sadhani Trading Company. The said company refunded the loan on 20.03.2013 on which gross interest of ₹4,59,616/- was accrued from the said company and TDS of ₹45,962/- deducted and net amount of ₹41,3,654/- was credited into the bank account of the assessee. In this background, now the issue before us is whether the sales consideration received by the assessee for 40 lacs 2% non-cumulative redeemable preference of M/s Easter (India) Chemicals Ltd. is genuine or liable to be added u/s 68 of the Act. We observe from the record before us that these shares were purchased by the assessee in the earlier assessment years and were held as investment in the balance sheet of the company. The assessee sold these shares during the year as stated hereinabove and what is being received was credited into the bank account of the assessee. A copy of sale bill is also available in the paper book. We are of the considered view that the transactions cannot be doubted merely on the ground that the assessee has sold the shares during the year and the amount received from said sale was thereafter advanced to M/s Sadhani Trading Company. Further, as a matter of fact, the assessee advanced the loan on 30.07.2012 on interest and the same was refunded and repaid on 20.03.2013 along with interest. In our opinion, when the investment has been accepted by the department in the earlier years the same cannot be doubted in the current year when the sale is made and therefore provisions of section 68 of the Act cannot be invoked. The case of the assessee find support from the decision of Hon'ble Jurisdictional High Court in ITAT/239/2024 in IA No. GA/2/2024 vide order dated 16th April, 2025, in the case of PCIT Vs. Tulsyan and Sons Private Limited, which has been followed in the case of ACIT Vs. Pawanputra

Advertising Private Limited in IT(SS)A Nos. 144 & 145/KOL/2024 and Ors. vide order dated 26.08.2025. The operative part of the coordinate bench decision is extracted below:-

"7. We have heard the rival contentions and perused the materials available on record including the written submissions dated 21.04.2025 and paper books No. 1 (page No. 1 to 357), paper book no. 2 (page No. 1 to 354 and paper book 3 (Case Laws). We find that the only dispute is sale of part unlisted equity shares to various parties thereby realizing total sales consideration of ₹11,56,20,000/-. We note that the assessee raised money by issue of equity shares in A.Y. 2008-09 of Rs. 64,85,49,000/-. We also note that entire funds raised were invested in unlisted equity shares in AY 2011-12. We note that the case of the assessee was selected for scrutiny only for this reason and the money raised by the assessee was accepted by the department and no adverse interference was drawn. We note that in A.Y. 2010-11 also, the case of the assessee was selected for scrutiny and all the money share capital /share premium was accepted. Thereafter the investments were made in private equity shares which were unlisted in A.Y. 2011-12. Similarly 2017-18 the case of the assessee was selected for scrutiny and investments were not doubted at all. Thus it is clear that over all these years the investments were not doubted by the department. These investments made in the A.Y. 2011-12 were partly sold at cost by the assessee during the instant assessment year which realized ₹11,56,20,000/- which were accepted by the Revenue right from A.Y. 2011-12 till the instant assessment year. We have also noted that the assessee has filed before the Id. AO as well as before the Id. CIT (A) all the evidences qua the purchases and sale of shares. The assessee has filed all the evidences qua the purchasers such as ITRs, names, addresses, audited balance sheets, bank statements, confirmations, etc. proving the identity, creditworthiness of the purchasers and genuineness of the transactions. We note that even the purchasing companies have filed their evidences as called for by the Id. AO comprising all the evidences as stated above. The Id. CIT (A) has recorded a finding of fact that apart from the assessee, purchasing companies had also filed all the evidences before the Id. AO however the Id. AO had not brought on record any independent and substantive evidences pointing out any defect or deficiency in the said evidences. The Id. CIT (A) finally noted that the assessee has proved the identity and creditworthiness of the parties and also the genuineness of the transactions by filing all these documents and thus, discharged its initial burden.

We observe that the Id. CIT (A) also noted that the department has accepted all these investments in the earlier assessment years, even in the scrutiny assessments and had not drawn any adverse interference. Therefore, we do not find any infirmity/anomaly in the appellate order of the Id. CIT (A), who has passed a very reasoned and speaking order after following the decision of Hon'ble Jurisdictional High Court in case of CIT VS. Dataware Private Ltd. (supra) as well as the decision of the co-ordinate benches on the same issue namely; M/s Swarna Kalash Commercial Pvt. Ltd. vs ACIT (supra) & M/s Ashtvinayak Sales Pvt. Ltd. vs ACIT (supra). We have perused the decisions in the above referred two decisions of the coordinate benches followed by the Id. CIT (A) and find that the issue is exactly similar as before us in the present case. The operative part of M/s Ashtvinayak Sales Pvt. Ltd. vs ACIT (supra) extracted below: -

9. We have heard the rival contentions and perused the materials as placed before us. The issue for adjudication before us is in respect of confirmation of addition by Id CIT(A) as made by the AO on the ground that the identity and credentials of the purchasers are suspicious. We observe that the assessee has been in the regular business of purchase and sales of investments over the years as corroborated by the materials placed before us. Even the sales proceeds received during the current financial year were in respect of sale of shares /investments partly out of opening balance and partly out of current purchases as is apparent from the following chart placed before us:-

<i>Opening Investment</i>	<i>Purchases made during the year</i>	<i>Investments sold during the year</i>	<i>Closing Balance of Investments</i>
24,81,12,740	106,69,21,561	99,72,36,896	31,77,97,405

9.1. The assessee has also filed movement of investments over the years which showed that the phenomenon of purchase and sale of shares/investments was regular feature of the assessee's business. This is also undisputed that the assessee company had raised share capital (including premium) amounting to Rs.119,84,67,000/- in financial year 2010-11, relevant to AY 2011-12 and the capital so raised in AY 2011-12 was invested in shares/securities and accounted for in the books of accounts which were audited and audited accounts are placed at page no. 102 to 111 of PB Vol.-1. We also note that the assessment for AY 2011-12 was framed u/s 143(3) of the Act vide order dated 17.03.2014 a copy of which is placed at page no. 276 and 277 of PB Vol.-1 and the neither the share capital/share premium nor the investments out of that source were doubted by the AO.

9.2. We also note that similar issue was involved in the case of M/S Swarna Kalash Commercial Pvt Ltd. Vs ACIT ,Central Circle -2(2), Kolkata, a group concern of the Rashmi Group of Companies ,which was also subjected to search u/s 132(1) of the Act in the same search proceedings. We note that the coordinate bench has decided the issue in favour of the assessee in ITA No. I.T.(S.S.)A.No.53/Kol/2022 A.Y.2019-20 vide order dated 01.09.2023 involving the same issue of addition of sale of shares/investments by the AO on the ground that identity and credentials of the purchasers of shares/investments were suspicious. The operative part of the order is extracted as under:

"6.1.We have considered the rival contentions and gone through the record. First we deal with the issue relating to the undated detailed order passed by the Assessing Officer even after the prescribed date of limitation for passing the assessment order for the assessment year under consideration which is other than the short cryptic order as reproduced above and which did not even bear any Document Identification Number, (in short "DIN")as mandated vide CBDT Circular No.19 of 2019.

6.1. As mentioned in the said CBDT circular no. 19 of 2019 and as also further held by the Hon'ble Delhi High Court in the case of CIT vs. Brandix Mauritius Holdings Ltd. [2023] 149 taxmann.com 238 (Del), any

communication without mentioning of the DIN in its body is to be treated as non-est. Therefore, the subsequent undated assessment order and without any DIN mentioned in the order, and passed after the limitation period prescribed for passing of the assessment order cannot be taken cognisance of.

7. So far as the original order (extracted above) passed by the Assessing Officer is concerned, we are in agreement with the contentions of the Ld. Counsel for the assessee that the same is a small and cryptic order and the additions have been made by the Assessing Officer in the said order in a mechanical manner without any discussion on merits and without pointing out any justifying material warranting such additions. Therefore, the additions made by the Assessing Officer by way of such an cryptic order are not sustainable as per law.

11. We have considered the rival contentions and gone through the record. We find force in the submissions made by the learned Counsel of the assessee which have been discussed above in detail. We note that it is an admitted fact on record that assessee raised share capital at a premium in FY 2005-06 which was accepted by the AO in scrutiny assessment under section 143(3). The capital so raised was invested in shares of Pvt. Ltd. of various companies. These shares were sold during the year under consideration to different parties, corporate/non-corporate. The sale proceeds have come in assessee's bank account through banking channel.

11.1. In its normal course of business, the assessee had made purchases and sale of investments as under which is tabulated as under:

<i>Opening Investment</i>	<i>Purchases made during the year</i>	<i>Investments sold during the year</i>	<i>Closing Balance of Investments</i>
<i>20,40,10,245</i>	<i>66,47,63,507</i>	<i>17,05,60,000</i>	<i>69,82,13,635</i>

11.2. The shares were held by the assessee as investments and were sold at the cost of acquisition by the assessee. Hence, there is no profit/loss on such sale of investment. We also look at the movement of investment held by the assessee, which is tabulated below:

FY	AY	Opening	Purchase	Sales Amount	Closing Balance	by A.O.
2014-15	2015-16	63,42,00,000			63,42,00,000	
2015-16	2016-17	63,42,00,000	42,44,960	18,344,960	62,01,00,000	1,83,44,960
2016-17	2017-18	62,01,00,000	56,27,44,459	468,499,459	71,43,45,000	46,84,99,459
2017-18	2018-19	71,43,45,000	1,55,17,29,538	2,062,064,910	20,40,09,628	2,06,20,64,910
2018-19	2019-20	20,40,09,628	66,47,64,007	170,560,000	69,82,13,635	17,05,60,000
					Total	2,71,94,69,239

11.3. We also refer to the details of opening stock, purchases, sales and closing stock during the year, placed on record by the assessee:

SI No	Name of the Script	Opening Balance	Purchases	Sales	Closing Balance
		Amount	Amount	Amount	Amount
1	Bellona Supply Pvt. Ltd.	1,24,57,344	0	1,24,57,344	0
2	P N Jewelers Pvt Ltd	38,45,323	0	38,45,323	0
3	Rozela Tie Up Pvt. Ltd.	3,64,33,053	0	3,64,33,053	0
4	Rashmi Cement Ltd.	0	1,57,32,000	0	1,57,32,000
5	Cimmco Vinimay Pvt. Ltd.	13,32,04,353	53,71,44,701	0	67,03,49,0
6	Festive Vincom Pvt Ltd	28,01,625	0	0	28,01,625
7	GreenHillDealmark Pvt Ltd	26,14,850	0	0	26,14,850
8	SwabhimanCommosales	26,15,900	0	0	26,15,900
9	Topline Business Pvt Ltd	41,00,205	0	0	41,00,205
10	VidyaBuildcon Pvt Ltd	0	2,50,00,000	2,50,00,000	0
11	BadrinathMinning Pvt Ltd	59,36,974	75,250	60,12,224	0
12	Sankul Retailers Private	0	74,49,572	74,49,572	0
13	Alok Financial Services	0	8,10,000	8,10,000	0
14	Asankul Cosmetics Pvt Ltd	0	6,55,26,090	6,55,26,090	0
15	Daffodil Plaza Pvt Ltd	0	88,198	88,198	0
16	NAT Communication &	0	1,26,37,632	1,26,37,632	0
17	Alok Pattanayak	0	3,00,000	3,00,000	0
	Total	20,40,10,245	66,47,63,507	17,05,60,00	69,82,13,6

11.4. Based on the analysis of the above details, it is evident that entire sales is made from purchases & opening stock as under:

Breakup of Sale of Shares Amount(Rs.)	Breakup of Sale of Shares Amount(Rs.)
Sold out of Opening Investment 5,86,73,194	Sold out of Opening Investment 5,86,73,194
Sold out of Investment Purchased During the Year 11,18,86,806	Sold out of Investment Purchased During the Year 11,18,86,806
Total 17,05,60,000	Total 17,05,60,000

11.5. It is also important to note that the AO has made enquiries from the buyers of the shares sold by the assessee by issuing summons u/s 131 of the Act who have responded and furnished the required details. Summary Statement of the replies made in response to notice u/s 131 by various buyers (Sale of Shares) is tabulated below:

SL No.	CORPORATE ASSESSE	Page No.	FY 2018-19
1	Bhootmath Commodities Pvt Ltd	1-262	₹ 1,71,59,300
2	Bluestar Mercantile Pvt Ltd	263-265	₹ 5,00,000
3	Charvi Dealmark Pvt Ltd	267-356	₹ 10,00,000
4	Daania Trading Pvt Ltd	357-359	₹ 30,00,000
5	Elvof Trading Pvt Ltd	361-369	₹ 1,00,000
6	Express Image Pvt Ltd	370-542	₹ 1,11,00,000
7	Laxhmidhan Business Pvt Ltd	544-546	₹ 6,00,000
8	MuditVanijya Pvt Ltd	547-597	₹ 5,50,000
9	Outright Commodities Pvt Ltd	599-846	₹ 2,44,90,700
10	Over Arching Impex Pvt Ltd	847-1053	₹ 81,00,000
11	Radhacharan Tradevin Pvt Ltd	1055-1158	₹ 10,00,000
12	S P Udyog Pvt Ltd	1159-1161	₹ 25,00,000

13	Samundar Tradelink Pvt Ltd	1162-1164	₹ 34,00,000
14	Shatabdi Entertainment Pvt Ltd	1165-1193	₹ 14,00,000
15	Spur Trading Pvt Ltd	1195-1204	₹ 7,50,000
16	Swarnmahal Vyapaar Pvt Ltd	1205-1252	₹ 15,00,000
17	Swetang Retails Pvt Ltd	1253-1356	₹ 50,00,000
18	Viewpoint Advisory Pvt Ltd	1357-1490	₹ 85,00,000
19	Yuthika Merchandise Pvt Ltd	1492-1603	₹ 25,00,000
	Total	(A)	9,31,50,000

SL No.	NON- CORPORATE ASSESSE	Page No.	FY 2018-19
20	Bengal Trade Agency	1604-1613	₹ 1,64,00,000
21	Bhagwati Trading	1614-1616	₹ 57,90,000
22	Om Sai Enterprise	1617-1619	₹ 24,90,000
23	Simplex Xallolloy	1620-1622	₹ 78,05,000
24	Others-Non- Corporate		₹ 4,17,35,000
	Total		₹ 7,42,20,000

12. Further, according to the Id. Counsel, the only piece of evidence that is there in this case is the statement of Sri Sanjib Patwari who is one of the owners of the Rashmi group and Sri K K Verma is the accountant, recorded u/s 132(4) of the Act which have been relied upon by the Assessing Officer. These statements have been retracted the very next day by furnishing affidavits. Subsequent to retraction, no further cross-examination was conducted of these persons. The Id. Counsel has further submitted that even otherwise the addition made by the Assessing Officer was far more than the alleged disclosure made by these persons in their retracted statements and hence, no cognizance in fact can be taken for the purpose of the addition.

12.1. We find force in the above contentions of the Id. Counsel in the facts and circumstances of the case. As laid down by the various Higher Courts of the country, the retracted statement can not be made sole basis for making the additions. The Jurisdictional Calcutta High Court in

the case of *Principal Commissioner of Income Tax Vs. Golden Goenka Fincorp Ltd.* [2023]148 taxmann.com 313(Calcutta) has held that where assessing officer solely based on statement of assessee's director recorded during search operation treated share application money received by assessee company as undisclosed income and made additions u/s 68 of the Act, since said statement was retracted and there was no cash trail or any other corroborative evidence or investigation brought on record by AO, impugned additions were liable to be deleted. Even the Hon'ble A.P. High Court in the case of "*Naresh Kumar Agarwal*" (2015) 53 taxmann.com 306 (Andhra Pradesh) has observed that where, in the absence of any incriminating material etc. found from the premises of the assessee during the course of search, statement of assessee recorded under section 132(4) would not have any evidentiary value. Similar view has been adopted by the Jaipur bench of the Tribunal in the case of "*Shree Chand Soni vs. DCIT*" (2006) 101 TTJ 1028 (Jodhpur). The Hon'ble Delhi High Court in the case of "*CIT vs. Harjeev Agarwal*" in ITA No.8/2004 vide order dated 10.03.16 has observed that a statement made under section 132(4) of the Act on a stand-alone basis, without reference to any other material discovered during search and seizure operation, would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation. In the case of "*Commissioner of Income Tax vs. Sunil Agarwal*" (2015) 64 taxman.com 107 (Delhi-HC), the assessee therein, during the course of search, made a categorical admission under section 132(4) that the cash amount seized belonged to him and it represented undisclosed income not recorded in the books of accounts. The assessee did not immediately retract from the above admission but only during the assessment proceedings at a belated stage. In his retraction, the assessee stated that the surrender was made under a mistaken belief and without looking into books of account and without understanding law and that he had been compelled and perturbed by events of search and that the pressure of search was built so much that he had to make the surrender without having actual possession of the assets or unexplained investments or expenses incurred and that there was no such income as undisclosed. The Hon'ble Delhi High Court, after considering the fact and circumstances of the case, while dismissing the appeal of the revenue, observed that though the fact that the assessee may have retracted his statement belatedly, yet, it did not relieve the AO from examining the explanation offered by the assessee with reference to the books of account produced before him. Although, a statement under section 132(4) of the Act carries much greater weight than the statement made under section 133A of the Act, but a retracted statement even under section 132(4) of the Act would require some corroborative material for the AO to proceed to make additions on the basis of such statement.

12.2 In the case of "*Basant Bansal vs. ACIT*" reported in (2015)63 taxmann.com 199 (Jaipur Trib.), the assessee therein, during the search and seizure action u/s 132 of the Act, offered a summary discloser of income as undisclosed and the department accepted the summary

surrender of income and thereafter advance tax for the said surrendered of income was also deposited, but thereafter it was contended by the assessee that the surrender was made under threat or coercion and that no incriminating material was found during the search action. The stand of the department was that the admission was voluntary and was not under a mistaken belief of fact or law and that the assistance had enough time to go through the facts of their case, law applicable in their case and take advice from their counsels and advisors before filing the letter of surrender of undisclosed/unaccounted income and that the admission by them was final and binding on them; The co-ordinate Jaipur Bench of the Tribunal, after overall appreciation of the fact and evidences before it, observed that the assessee's surrender was not based on any incriminating material and that the discloser being not voluntary and extracted by the department in creating a coercive situation cannot be relied solely to be basis of addition as undisclosed income. The co-ordinate bench of the Tribunal while relying upon various case laws of the higher authorities observed that it is well settled legal position that merely on the basis of a statement which is not supported by the department with cogent corroborative material cannot be a valid basis for sustaining such ad-hoc addition. The co-ordinate Jaipur Bench of the Tribunal (supra) further observed that the issue of existence of pressure, threat, coercion during search proceedings is to be judged by reference to the existing facts and circumstances, human conduct and preponderance of possibilities. During the search proceedings, record relating thereto being in exclusive custody of the searching officers, it is their wish and will which prevails during the fateful period. That it is almost impossible for the assessee to adduce demonstrative evidence of exerting such pressure. The co-ordinate bench of the Tribunal (supra) while holding so, apart from relying upon various decisions of the higher courts has also relied upon the decision of the Tribunal in the case of "Dy CIT vs. Pramukh Builders" (2008) 112 ITD 179 (Ahd.) wherein it has been held that even in the absence of proof of coercion or pressure, the statement by itself cannot be taken as conclusive. Therefore, merely in the absence of proof of pressure, threat, coercion or inducement the statement cannot be held as conclusive and additions cannot be made by solely relying on a statement or a letter.

12.3. The case of the assessee, before us, is on better footing as in this case, there is no delay in retraction of the statement which was done on the very next day by filing affidavits before the Metropolitan Magistrate

12.4. Even the CBDT Letter No.286/2/2003-IT(Inv) dated Oct 3, 2003 in this respect read as under:

"To

The Chief Commissioners of Income Tax, (Cadre Contra) &

All Directors General of Income Tax Inv.

Sir,

Subject: Confession of additional Income during the course of search & seizure and survey operation – regarding

Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.

Yours faithfully,

12.5. A perusal of the above circular also shows that it is in the notice of the statutory controlling body of the Income Tax Authorities that the revenue officials are used to take confessional statements from the person searched under force, pressure or threat and that is why they have made it mandatory that additions solely on the basis on such statements should not be made and that corroborative evidences should be collected or obtained before making such additions. The circular of the CBDT is binding on the revenue officials. In the facts and circumstances of this case, when seen in the light of above case laws and CBDT circular, additions in this case cannot be said to be justifiably made.

13. All the above details when kept in juxtaposition, there remains nothing to cast an iota of doubt on the sale transaction of shares held by the assessee as investments which it undertook in the ordinary course of its business, more importantly, purchases having made in the current year also. Further, as rightly pointed out by the learned Counsel, both opening balance of investment in shares and the purchases made during the year have not been disputed or doubted by the authorities below so as to bring the entire sale consideration to tax.

14. At this stage, the Id. DR has submitted that the assessee has claimed that it has undertaken this sale transaction by selling the shares at the cost at which it had acquired them in AY 2006-07. At the same time, assessee submits that it has undertaken this transaction in the ordinary course of its business. The Id. DR has submitted that the conduct of business is always with a profit motive, more particularly when the assessee had held these shares for past several years and had also made purchases during the year, deploying its funds. There

ought to be certain element of profit embedded in the sale transaction executed which must be brought to tax.

15. Considering the above submission of the Id. DR and taking a holistic view of the facts and circumstances of the case, we find it proper to consider net profit element @ 5% of the sale consideration i.e. 5% of Rs.17,05,60,000/- which comes to Rs.85,28,000/- be subjected to tax. We, accordingly delete the addition to the extent of Rs.16,20,32,000/- made u/s 68 of the Act and sustain the balance of Rs.85,28,000/- towards profit element on the impugned sale transaction of shares undertaken by the assessee.

16. In the result, appeal of the assessee is partly allowed.

9.4. It is clear from the above that the facts in the instant case before us are materially same vis a vis the facts in the case decided by the coordinate bench supra in group concern. We, therefore, respectfully following the same set aside the order of Id CIT(A) and direct the AO to apply profit of 5% on the sales proceeds of Rs. 99,72,36,896/- which comes to Rs. 4,98,61,845/- and delete the remaining addition of Rs. 94,73,75,051/-.

10. In the result the appeal of the assessee is partly allowed.”

9. We have also perused decision by the Hon'ble High Court in ITAT/239/2024 in IA No. GA/2/2024 vide order dated 16th April, 2025, in the case of PCIT Vs. Tulsyan and Sons Private Limited (supra) affirming the order of the tribunal. In the said case the addition made by the Id. AO on account of sale of investment was deleted by the Id. CIT (A) and the Tribunal confirmed the order of the Id. Assessing Officer. The Hon'ble High Court while deciding the issue held as under: -

We have heard Mr. Aryak Dutta, learned standing counsel assisted by Mr. Soumen Bhattacharjee, learned standing counsel for the appellant and Mr. J. P. Khaitan, learned senior advocate assisted by Mr. Pratyush Jhunjunwalla, learned advocate for the respondent.

The short issue which falls for consideration is whether the learned tribunal was right in affirming the order passed by the Commissioner of Income Tax (Appeals)- 21, Kolkata [CIT(A)] dated 10.5.2023 by which the assessee's appeal was allowed and the addition made under section 68 of the Act was deleted. The Assessing Officer made the addition by invoking section 68 of the Act on the ground that the assessee failed to discharge its onus to establish identity, creditworthiness and genuineness of the transaction in respect of the money received through cash trail. The CIT(A) in course of hearing the appeal called for a remand report from the Assessing Officer and in the said remand report the Assessing Officer has in no uncertain terms accepted the receipt of the impugned sum on account of sale proceeds of investment. The Assessing Officer verified the investment sold which are shown in the balance-sheet for the financial year 2010-11 in Schedule-4 of the balance-sheet and after considering these facts it was stated that the assessee had sold shares held by way of the investment during the year to M/s. Shivshakti Communications and Investment Pvt. Ltd. and Carnation Tradelink Pvt. Ltd. and it is not a receipt of unsecured loan. This fact, apart from other factual details, were considered by

the CIT(A) and by an elaborate order dated 10.5.2023 the appeal filed by the assessee was allowed. The tribunal on its part re-examined the factual position and took note of the findings rendered by the CIT(A) and concurred with the same. We also find that the tribunal has also examined the factual position and took note of the remand report as called for by the CIT(A) which confirmed the alleged sum is on account of sale of investment and not otherwise.

Thus, we find no question of law much less substantial question of law arises for consideration in this appeal. Accordingly, the appeal fails and the same is dismissed. Consequently, the connected application stands closed.

10. Since, the facts of the case before us vis-à-vis, facts of the decisions cited above are substantially similar and therefore, we respectfully following the ratio laid down in the above decisions upheld the order of Id. CIT (A) on this issue by dismissing the appeal of the Revenue.

11. So far as the Cross Objection is concerned, we note that the assessee has challenged the direction of the Id. CIT (A) to the Id. AO to make an addition at the rate of 5% of the total sales consideration towards the net profit embedded in the sales consideration.

12. After hearing the rival contentions and perusing the materials available on record, we find that the Id. CIT (A) has not given any basis for such direction to the Id. Assessing Officer. In other words, the Id. CIT (A) has just acted on the presumptions and surmises and thus, presumed that the assessee might have made some profits from sale by investments. In our opinion, the said direction by the Id. CIT (A) is without any substantive basis and therefore cannot be sustained. Accordingly, we set aside the order of Id. CIT(A) to the extent of this direction of making addition @ 5%. Accordingly, the cross objection of the assessee is allowed."

2.4. We considering the ratio laid down by the Hon'ble High Court and the co-ordinate Bench, set aside the order of Id CIT(A) and direct the AO to delete the addition.

3. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 02.12.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 02.12.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata