

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE**

ITAT 94 OF 2025

IA NO: GA 2 OF 2025

**PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
M/S SHIPRA ENCLAVE PVT LTD**

BEFORE:

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR**

For the Appellant : Mr. Soumen Bhattacharjee, Ld. Adv.
Mr. Ankan Das, Ld. Adv.
Ms. Shradhya Ghosh, Ld. Adv.

For the Respondent : Mr. S.M Surana, Ld. Adv.
Mr. Pratyush Jhunjhunwala, Ld. Adv.
Ms. Sruti Datta, Ld. Adv.
Ms. Sakshi Singhi, Ld. Adv.

Hearing concluded on : 05.01.2026

Judgment on : 04.02.2026

Uday Kumar, J:-

1. This appeal by the Revenue, preferred under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata, dated 29th November, 2023, in ITA No. 543/Kol/2023 for the Assessment Year 2012-13. By the said order, the learned Tribunal allowed the appeal filed by the assessee and deleted the addition of Rs. 6,22,00,000/- made by the Assessing Officer under Section 68 of the Act

on account of unexplained share capital and share premium. The case brings into sharp focus the perennial conflict between the Revenue's reliance on the "Test of Human Probability" and the Assessee's reliance on "Cast Iron Documentary Evidence."

2. The Revenue, being aggrieved by the deletion, has proposed the following substantial questions of law:

- (a) Whether the Learned Tribunal has committed substantial error in law in deleting the addition of Rs. 6,22,00,000/- in the form of unexplained cash credit u/s 68 of the Income-Tax Act, 1961 without giving due weightage to the unjustified payment of high premium to acquire share of seemingly unprospective company and doubtful creditworthiness of share subscriber ignoring the ratio laid down in the case of Principal Commissioner of income Tax (Central)-1 Vs. NRA Iron & Steel (P) Ltd. reported in [2019] 103 taxmann.com 48/262 Taxman 74/412/ITR 161 (SC) and in the case of PCIT(Central)-2, Kolkata vs. M/s. BST Infratech Ltd. in ITAT/67/2024 (IA No. GA/2/2024) dated 23.04.2024?
- (b) Whether the Learned Tribunal has committed substantial error in law in granting relief and deleted the addition made by the Assessing officer without examine the creditworthiness of the capital introducer where the assessee failed to discharge its legal obligation to prove the source of fund of Rs. 6.22,00,000/- which is claimed as fresh share capital.?
- (c) Whether the Learned Tribunal has committed substantial error in law, by not justified to delete the addition made by the

Assessing officer without considering the fact that the source of such fresh investment was not properly explained by the assessee and it lacked any real profit-making business credence?

3. The factual matrix, as can be gleaned from the records, reveals that the respondent-assessee is a Non-Banking Financial Company (NBFC) duly registered with the Reserve Bank of India. For the relevant Assessment Year, its return was selected for scrutiny specifically to examine the receipt of a large share premium. During the assessment proceedings, the Assessing Officer (AO) noted that the assessee had raised share capital and premium from fifteen corporate entities.
4. It is seen from the record that the assessee had placed before the AO a voluminous "Paper Book" containing all requisite documents, including PAN details, Income Tax Return acknowledgments, and audited financial statements of all fifteen subscriber companies. Notwithstanding the availability of this documentary evidence, the AO issued summons under Section 131 of the Act to the directors of these companies. When they failed to appear personally, the AO proceeded to brand these companies as "shell entities" and added the entire amount of Rs. 6,22,00,000/- as unexplained cash credit. This view was subsequently affirmed by the CIT (Appeals).
5. The learned Tribunal, however, reversed this finding, noting that the subscribers were active taxpayers who had confirmed the transactions in response to notices issued under Section 133(6) of the Act.

6. We have heard Mr. Soumen Bhattacharjee, learned Advocate for the Revenue, and Mr. S.M Surana, learned Advocate for the respondent-assessee.
7. Mr. Bhattacharjee strenuously argued that the meagre income declared by the subscriber companies, when contrasted with the high premium paid to acquire the shares of the assessee, leads to an irresistible conclusion that the transactions were mere accommodation entries. He relied heavily on the decision of the Hon'ble Supreme Court in *PCIT vs. NRA Iron & Steel (P) Ltd.* and contended that the AO was justified in looking behind the "paper trail" to ascertain the true creditworthiness of the investors and genuineness of the transaction.
8. Per contra, Mr. Surana, learned Advocate for the assessee, submitted that as a regulated NBFC, the assessee's financial transactions are subject to stringent oversight by the RBI and the MCA. He pointed out that all fifteen subscribers were active assesseees on the records of the Income Tax Department and had duly responded to the notices issued by the AO under Section 133(6) of the Act.
9. We have carefully considered the rival submissions and perused the materials on record. It is a settled legal position that to discharge the initial onus under Section 68, the assessee must establish the identity of the creditor, their creditworthiness, and the genuineness of the transaction. In the instant case, the learned Tribunal conducted a meticulous factual inquiry and recorded a specific finding that the assessee provided a "Cast Iron" documentary foundation. The audited

balance sheets of the subscribers demonstrated a substantial net worth, which was far in excess of the amounts invested.

- 10.** Furthermore, we find that the AO's reliance on the non-appearance of the directors is misplaced and is not supported by the statutory scheme where robust documentary evidence is available. As held by this Court in *PCIT vs. Sreeleathers [2022] 448 ITR 332 (Cal)*, the AO is vested with co-terminus powers under Section 131 of the Act to compel attendance. If the AO fails to exercise these powers, he cannot subsequently visit the consequences of such failure upon the assessee. Personal appearance of a director is not a statutory substitute for documented traceability in a corporate assessment, especially when the entities are active taxpayers.
- 11.** Insofar as the reliance on *NRA Iron & Steel* is concerned, we find the facts of that case to be clearly distinguishable. In that case, the investors were found to be non-existent or "phantom" entities upon field inquiry. In the case before us, the investors are identifiable taxpayers who directly responded to notices u/s 133(6) and confirmed the transactions through banking channels. Equating "traceable investors" with "phantom entities" is a leap in logic that cannot be countenanced. Furthermore, the valuation of shares is a matter of commercial wisdom. Unless the Revenue proves a "live link" showing that the funds originated from the assessee's own coffers, the AO cannot substitute his judgment for that of the marketplace.
- 12.** In view of the aforesaid discussion, we arrive at a definite conclusion that in a corporate assessment, documented traceability (comprising ITR acknowledgments, PAN details, and Bank Statements) through

legitimate banking channels carries greater evidentiary weight than the subjective suspicion of an Assessing Officer. The "Test of Human Probability" cannot be invoked as a tool to disregard a verified and audited paper trail. We also conclude that the ratio in *NRA Iron & Steel* is applicable only to "phantom" or "non-existent" entities found to be non-traceable upon field inquiry. It cannot be extended to active, traceable taxpayers simply because their investment decisions appear commercially improbable to the Revenue. Equating "traceable investors" with "phantom entities" is a leap in logic that cannot be countenanced. Furthermore, the valuation of shares is a matter of commercial wisdom. Unless the Revenue proves a "live link" showing that the funds originated from the assessee's own coffers, the AO cannot substitute his judgment for that of the marketplace.

- 13.** Upon considering the submissions made on either side and perusing the materials on record, we find that the learned Tribunal has conducted a meticulous factual inquiry. The Tribunal has recorded a specific finding that the assessee had provided "Cast Iron" documentary evidence to establish the identity and creditworthiness of the subscribers. The audited balance sheets of these companies reflected a substantial net worth, which was far in excess of the amounts invested in the assessee company.
- 14.** We are convinced that the findings of the learned Tribunal are based on a meticulous factual inquiry. The Revenue has failed to produce any contrary material to disprove the documents filed. It is a settled position

that suspicion, however strong, cannot take the place of evidence. We find no perversity in the findings of the learned Tribunal.

- 15.** For the reasons aforementioned, we are of the view that no substantial question of law arises for consideration in this appeal. The findings of the learned Tribunal are based on a sound appreciation of facts and settled legal principles.
- 16.** In the result, the appeal being ITAT 94 of 2025, filed by the Revenue stands dismissed.
- 17.** The order of the learned Tribunal deleting the addition of Rs. 6,22,00,000/- is hereby, upheld.
- 18.** All substantial questions of law are answered in favor of the Assessee and against the Revenue.
- 19.** There shall be no order as to costs.
- 20.** GA 2 of 2025 stand disposed of accordingly.
- 21.** Urgent certified copy of this judgment, if applied for, be issued to the parties on usual terms.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)