OD-46 & 47

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income tax)
ORIGINAL SIDE

IA No.GA 1 of 2020 (Old No.GA 1035 of 2020)
In
ITAT 29 of 2020

PRINCIPAL COMMISSIONER OF INCOME TAX-15, KOLKATA
Vs
BIHARI LAL MALPANI

AND

IA No.GA 2 of 2020 (Old No.GA 1037 of 2020)
In
ITAT 29 of 2020

PRINCIPAL COMMISSIONER OF INCOME TAX-15, KOLKATA
Vs
BIHARI LAL MALPANI

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th November, 2021.

Appearance:
Mr.P.K. Bhowmik, Adv.
Mr. Asok Bhowmik, Adv.
...for the appellant.

Mr.Brijesh Kumar Singh, Adv.
Mr. Subash Agarwal, Adv.
...for the respondent.

Re.: IA No.GA 1 of 2020 (Old No.GA 1035 of 2020)

The Court : Heard Mr. P.K. Bhowmik, learned Counsel appearing for the appellant/Revenue and Mr. Subash Agarwal, learned Counsel assisted by Mr. Brijesh Kumar Singh, learned Counsel appearing for the respondent/assessee.

We are satisfied with the reasons assigned in the affidavit filed in support of the petition and, therefore, we are exercising discretion to condone the delay in filing the appeal. Accordingly, the delay is condoned. The application is allowed.

Re.: ITAT 29 of 2020

This appeal of Revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 5th April, 2019 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the 'Tribunal') in ITA No.527/Kol/2017 for the assessment year 2013-14.

The Revenue has raised the following substantial questions of law for consideration :

A) Whether the Assessee is entitled to tax exemption u/s 10(38) when the records and material indicates that the alleged income shown as Long Term Capital Gain is result of manipulated practice of an organized tax evasion?

B) Whether the order of the Income Tax Appellate Tribunal was erroneous in law in deleting the addition of Rs.62,49,500/- ignoring the larger scam of tax evasion by way of bogus capital gain generated in penny stock?

C) Whether the Income Tax Appellate Tribunal was erroneous in law when it failed to give credence to investigations made by the Assessing Officer, Investigation Wing of the Income Tax Department as well as SEBI on astronomical rise in prices of shares of Companies which have no net worth and no financial foundation and thereby failed to apply the test of human probability to ascertain the true nature of transactions resulting in bogus Long Term Capital Gains?

D) Whether the Income Tax Appellate Tribunal order was erroneous in law in accepting the transactions in purchase/sale of shares as genuine, merely on the basis of documents supplied by the assessee, without piercing the veil of the manipulative and fraudulent transactions entered by assessee in collusion with a cabal of share brokers and entry operators for the purpose of tax evasion?

It is submitted by the learned Counsel for the respondent/assessee that the assessee has availed the benefit of the Vivad Se Vishwas scheme and Form 3 has been issued to the assessee on 11th February, 2021.

In the light of the said development, there is no necessity for the Court to decide the questions of law framed in this appeal. Accordingly, the appeal stands disposed of and the substantial questions of law are left open.

The stay application being IA No.GA 2 of 2020 (Old No.GA 1037 of 2020) accordingly stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pa.