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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 173/2021

PR. COMMISSIONER OF INCOME TAX-12 Appellant

Through Mr. Sanjay Kumar with Ms. Easha
Kadiyan, Advs.

versus

MS. REESHU GOEL Respondent

Through None.

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Date of Decision: 14th December, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVING CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the order dated 7th October, 2019 in ITA No. 1691/Del/2019 passed by the Delhi Bench of ITAT.
2. Learned counsel for the Appellant states that the ITAT erred in deleting the addition of Rs.1,77,25,158/- made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 ['Act'] on account of bogus Long Term Capital Gain on penny stock and the addition of Rs.1,77,251/- on account of commission paid by the assessee for obtaining accommodation entry.

3. Learned counsel for the Appellant submits that the ITAT failed to appreciate that the transaction entered by the assessee for purchase of shares of CCL International Ltd. are in the nature of bogus or colourable transaction resulting in huge capital gain to the assessee. He states that the ITAT erred in holding that to prove a bogus or colourable Transaction there has to be an individual inquiry by the Assessing Officer ignoring the fact that the Assessing Officer had referred to an inquiry report of Investigation Wing Kolkata where certain brokers have admitted that they had provided accommodation entries in the scrip of CCL International Ltd. to third parties.
4. Learned Counsel for the Appellant lastly states that the ITAT failed to appreciate that the company did not have much financial worth to justify price hike of its shares.
5. A perusal of the impugned order reveals that the Tribunal has allowed the respondent-assessee's appeal on cogent grounds.
6. In the impugned order the Tribunal has held that no enquiry had been conducted and the assessee's broker had not even been examined by the authorities below before passing the impugned orders. The ITAT also held that the scrips of M/s CCL International Ltd. were freely traded at the Bombay Stock Exchange between the years 2011 and 2014 and the assessee had purchased the shares in 2011 and sold the same in 2012. The ITAT also found that the revenue from the operation of M/s CCL International Ltd. from March, 2010 to March, 2012 was between Rs.55.25 crores to Rs.79 crores and the share price during the period 2010 to 2014 had increased from Rs.50 per share to Rs.609 per share.

7. This Court is of the view that there is no perversity in any of the findings given by the Tribunal.

8. The Supreme Court in the case of *Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs)*, (1999) 7 SCC 303 has reiterated that under Section 100 of the Code of Civil Procedure, the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. The Supreme Court in *Hero Vinoth (Minor) vs. Seshammal*, (2006) 5 SCC 545 has also held that “in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.” It has also held that there is a difference between question of law and a “substantial question of law”. Consequently, this Court finds that there is no perversity in the findings of the ITAT.

9. Accordingly, the present appeal is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 14, 2021/AS