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ITAT/30/2020
IA No.GA/1/2020 (Old No.GA/1039/2020)
IA No.GA/2/2020 (Old No.GA/1040/2020)

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

PRINCIPAL COMMISSIONER OF INCOME TAX-15, KOLKATA

-Versus-

SMT. ANITA DIGGA

Appearance:
Mr. Smarajit Roychowdhury, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022.

The Court : We have heard Mr. Smarajit Roychowdhury, learned standing counsel assisted by Mr. Soumen Bhattacharjee, learned Advocate appearing for the appellant/revenue.

There is a delay of 108 days in filing the appeal. Though notice has not been served on the respondent, since we are inclined to take up the appeal for disposal, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application for condonation of delay IA No.GA/1/2020 (Old No.GA/1039/2020) is allowed.

Re: ITAT/30/2020:

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 27th June, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata (the 'Tribunal' in short) ITA No.2524/Kol/2018 for the assessment year 2014-15.

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

"a) *Whether the Learned Tribunal has committed substantial error in law by not admitting that unexplained Long Term Capital Gains (LTCG) comes under the purview of unexplained cash-credits under Section 68 of the Income Tax Act, 1961 involving proceeding under Section 143(3) of the Income Tax Act, 1961 and suspicious transaction in shares cannot be exempted under Section 10(38) of the Act ?*

b) Whether the Learned Tribunal has committed substantial error in law when the Learned Tribunal failed to give evidence to investigations made by the Assessing Officer, Investigation wing of the Income Tax Department as well as SEBI an astronomical rise in pricy 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 the bogus Long Term Capital Gain (LTCG) ?

c) Whether the Learned Tribunal has committed substantial error in law in accepting the transactions in purchase/sale of penny stock as genuine, mainly in 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 help of share brokers and entry operators for the purpose of tax erosion ?

We have heard Mr. Smarajit Roychowdhury, learned standing counsel for the appellant/revenue.

Learned standing counsel for the appellant has produced before us a copy of the written instruction given by the Assistant Commissioner of Income Tax, Headquarters-XIII, Kolkata dated 8th April, 2022 addressed to the Additional Government Advocate, Ministry of Law & Justice, Department of Legal Affairs, Kolkata, informing him that the higher authorities have recommended for withdrawal of this appeal on the ground that the respondent/assessee has opted for the *Vivad-se-Viswas* Scheme, 2020. The said communication is placed on record.

Accordingly, the appeal (ITAT/30/2020) is dismissed as withdrawn. Consequently, the substantial questions of law are left open.

In the result, the connected application for stay IA No.GA/2/2020 (Old No.GA/1040/2020) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/As.