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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/37/2020
IA No.GA/2/2020 (Old No.GA/1147/2020)

PRINCIPAL COMMISSIONER OF INCOME TAX – 15, KOLKATA
Vs
SHRI MALIRAM AGARWAL

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 6th July, 2022

<u>Appearance</u> :
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for the appellant.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 1st February, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No.1966/Kol/2018 for the assessment year 2014-15.

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

a) Whether the Assessee is entitle 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.10,40,000/- 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?

We have heard Mr. Vipul Kundalia, learned standing counsel assisted by Mr. Anurag Roy, learned advocate appearing for the appellant/revenue. Though the respondent has been served and affidavit of service has been filed, none appears on behalf of the respondent.

The issue involved in the instant appeal is squarely covered by the decision in the case of Principal Commissioner of Income Tax-5, Kolkata –versus- Swati Bajaj and Ors. in ITAT No.6 of 2022 passed on June 14, 2022.

In the light of the above finding, the appeal is allowed and the substantial questions of law are answered in favour of the revenue.

The application for stay being IA No.GA/2/2020 (Old No.GA/1147/2020) stands disposed of.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

S.Pal/S.das