OD-12

ITAT/84/2021
IA No.GA/1/2021
IA No.GA/2/2021

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

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL-5, KOLKATA

-Versus-

M.P. KEDIA (HUF)

Appearance:
Mr. Om Narayan Rai, 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. Om Narayan Rai, learned standing counsel appearing for the appellant/revenue.

There is a delay of 684 days in filing the appeal. Though we find that the explanation is not very satisfactory but in the light of the submission made by the learned counsel appearing for the appellant that the respondent/assessee has availed the benefit of the *Vivad-se-Viswas* Scheme, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application being IA No.GA/1/2021 is allowed.

Re: ITAT/84/2021:

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 15th March, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata (the 'Tribunal' in short) ITA No.1878/Kol/2018 for the assessment year 2014-15.

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

"a) *Whether the Income Tax Appellate Tribunal has made substantial error by deleting the addition made on account of Long Term Capital Gain in one of the penny stock companies Shree Shaleen Textiles Ltd. as unexplained cash credit u/s 68 of the Income Tax Act, 1961 ?*

b) Whether the Income Tax Appellate Tribunal erred in deleting the disallowance of Long Term Capital Gain of Rs.6,28,500/- overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessees to plough back its unaccounted income in the form of fictitious Long Term Capital gain of Rs.6,28,500/- and claim bogus exemption thereby giving rise to the vice of flaw in the decision making process ?

c) Whether the Income Tax Appellate Tribunal by passing a sweeping order in large number of cases where the basic facts and the facts brought out by the Investigation Wing and the Assessing Officer are different which amounted to perversity and miscarriage of justice particularly when the Income Tax Appellate Tribunal being the last fact finding authority was required to go into specifies of each and every assessment and corresponding facts which were also discussed by the Commissioner of Income Tax (Appeals) ?

We have heard Mr. Om Narayan Rai, learned standing counsel appearing for the appellant/revenue.

Learned counsel for the appellant has produced a copy of a written instruction given by the Assistant Commissioner of Income Tax, headquarters-V, Kolkata dated 17th December, 2021 addressed to the junior Central Government Advocate, Ministry of Law & Justice, Department of Legal Affairs, informing him that the respondent/assessee has availed the benefit of *Vivad-se-Viswas* Scheme and deposited the disputed tax arrear of Rs.1,03,405/- on 23rd March, 2021.

In the light of the above, the appeal (ITAT/84/2021) stands dismissed on the ground that the respondent/assessee has availed the benefit of Vivad-se-Viswas Scheme. Consequently, the substantial questions of law are left open.

In the result, the connected application for stay IA No.GA/2/2021 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/As.