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

ITAT/86/2021
IA No.GA/2/2021

PRINCIPAL COMMISSIONER OF INCOME TAX – 5, KOLKATA
Vs
NAND KISHORE AGARWALA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 7th July, 2022

<u>Appearance</u> :
Mr. Soumen Bhattacharya, 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 28th June, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No.1983/Kol/2018 for the assessment year 2014-15.

The revenue has raised 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 in deleting the addition of undisclosed income ignoring the larger scam of organized tax evasion by way of bogus capital gain generated in penny stock?

c) Whether the Learned Tribunal has committed substantial error in law in taken only one lead case and decided to quash the addition of other cases without going into any specific details of the facts report of the Investigating Wing, SEBI of the remaining cases which amounts to severe perversity?

d) Whether the Learned Tribunal has committed substantial error in law by not holding that the Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which would justify addition of the said amount to the income of the Assessee?

e) Whether the Learned Tribunal has committed substantial error in law in deleting the disallowances of Long Term Capital Gain of Rs.12,47,758/- overlooking that the entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gain of Rs.12,47,758/- and claim bogus exemption?"

We have heard Mr. Soumen Bhattacharya, learned standing counsel 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 questions of law raised by the revenue in this appeal were considered 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 batch of cases reported in 2022 SCC Online Cal 1572 wherein the appeals filed by the revenue were allowed. The present appeal filed by the assessee is for the assessment year 2014-15 and there was no other connected appeal of the very same assessee in ITA/1983/Kol/2018 which was subject matter of the batch of cases in *Principal Commissioner of Income Tax-5, Kolkata –versus- Swati Bajaj and Ors.*, and the appeal filed by the revenue as against ITA/1983/Kol/2018 has been allowed. Therefore, the decision in the case of Principal

Commissioner of Income Tax-5, Kolkata (supra) is squarely applied to the facts of the instant case as well.

Accordingly, 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/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

S.Pal/pkd