OD-1 & 2

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

IA No. GA 2 of 2020
in
ITAT 53 of 2020

PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
Vs
SHRI AJAY KUMAR SHAW

AND

IA No. GA 1 of 2020
in
ITAT 53 of 2020

PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
Vs
SHRI AJAY KUMAR SHAW

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd February, 2022

Appearance:
Mr. P.K.Bhowmick, Adv.
Mr. Soumen Bhattacharya, Adv.
...for the appellant.

Re.: IA No. GA 1 of 2020

The Court : We have heard Mr. P.K. Bhowmick, learned senior standing counsel assisted by Mr. Soumen Bhattacharya, learned counsel appearing for the appellant/assessee.

There is a delay of 326 days in filing the appeal. Notice has been served on the respondent and the respondent by letter dated 14.12.2021 has informed the Joint Central Government advocate that he has opted for the Vivad Se Vishwas Scheme (V.S.V.Scheme) and Form No.4 has been issued. Therefore, we exercise discretion and condone the delay in filing the appeal. The application being IA No. GA 1 of 2020 for condonation of delay is allowed.

Re.: ITAT 53 of 2020

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 26th June, 2019 passed by the Income Tax Appellate Tribunal, Kolkata Bench 'SMC' Kolkata in ITA No. 2685/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 proceedings 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 taking only one lead case and decided to quash the addition of the other cases without going into any specific details of the facts of the remaining cases which amounts to severe perversity?

D. Whether the Learned Tribunal has committed substantial error in law by not considering that where any sum is credited in the books of an assessee maintained for any previous year, and the assessed offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year?

E. 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?

F. Whether in the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal had erred and failed to appreciate that the assessee could not substantiate the genuineness of the transaction to prove that the assessee had not indulged in a dubious share transactions meant an account for undisclosed income in the garb of Long Term Capital Gain (LTCG) to claim exemption under Section 10(38) of the Income Tax Act, 1961?

G. Without prejudice, whether in the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal had erred while allowing the assessee's appeal of claim of exemption under Section 10(38) without holding that transaction of sale and purchase of shares of Penny Stock companies was an adventure in nature of trade, thus, same was to be taxed a business income?

H. Whether in the facts and circumstances of the case, the order of the Learned Income Tax Appellate Tribunal is perverse in overlooking that it is the duty of the Tribunal to scratch surface and probe documentary evidence in depth in light of conduct of assessee and other surrounding circumstances in order to see whether the assessee is liable to provisions of Section 68 or not?

I. Whether the Learned Tribunal has committed substantial error in law by not appreciate that the assessee could not substantiate the genuineness of the transaction to prove that it had not indulged in dubious share transactions meant to account for undisclosed income in the grab of Long Term Capital Gain (LTCG) to claim exemption under Section 10(38) of the Act?

J. Whether the Learned Tribunal has committed substantial error in law by allowing the claim of the assessee under Section 10(38) of the Income Tax Act, 1961 without holding that the transaction of sale and purchase of shares of penny stock companies was an adventure in nature of trade, thus, same was to be taxed as business income?

K. Whether the order of the Learned Tribunal as perverse in overlooking that it is the duty of the Tribunal to scratch surface and probe documentary evidence in depth in light of conduct of assessee and other surrounding circumstances in order to see whether the assessee is liable to provision of Section 68 of the Income Tax Act or not?

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

In this appeal as well as in the condone delay petition notice was ordered and the department has taken steps to issue notice to the respondent/assessee dated 05.08.2021. The respondent/assessee by his letter dated 14.12.2021 addressed to the Joint Central Government advocate has acknowledged the receipt of the notice dated 05.08.2021 and also noted that the case would be fixed on 17.12.2021. The assessee further stated that he has opted for V.S.V. scheme and Form No.4 has been issued, copies of the Form Nos.1, 2, 3 and 4 were attached along with the said letter. However, in the affidavit of service which has been filed before us, those annexures/attachments do not find place. In any event, since the assessee himself by letter dated 14.12.2021 has stated that he has opted for V.S.V. Scheme, we dispose of the appeal on the said ground. Consequently, the substantial questions of law are left open.

The application being IA No. GA 2 of 2020 for stay also stands disposed of.

Let affidavit of service filed in Court today be kept with the records.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd.