OD-21&22

ITAT/104/2021
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-1, KOLKATA

-Versus-

M/S. EFFERVESCENT COMMERCIAL PVT. LTD.

Appearance:
Mr. Smarajit Roychowdhury, Adv.
Mr. Asok Bhowmick, Adv.
...for the appellant.

Mr. Vivek Murarka, Adv.
Mr. Dibanath Dey, Adv.
...for the respondents.

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

Date : 4th March, 2022.

The Court : We have heard Mr. Smarajit Roychowdhury, learned standing counsel assisted by Mr. Asok Bhowmick, learned advocate for the appellant/revenue and Mr. Vivek Murarka, learned counsel for the respondent/assessee.

There is a delay of 702 days in filing the appeal.

We have perused the affidavit in support of the application for condonation of delay and we find except for placing reliance on an Office Memorandum issued by the CBDT dated 16th September, 2019, there is no explanation for the inordinate delay.

Learned standing counsel for the revenue would submit that by the said Office Memorandum dated 16th September, 2019, in case of assessees claiming bogus LTCG/STCL through penny stock, the appeal should be filed though the monetary limit is below the threshold fixed in the circular issued under Section 268A of the Act.

Learned counsel appearing for the respondent/assessee submitted that though the issue for which assessment was completed vide order dated 28th December, 2016 may arise for a penny stock issue, it is not a matter concerning any claim for bogus LTCG/STCL. In this regard, learned counsel has drawn our attention to the reply to the show cause notice filed by the assessee before the assessing officer which has been noted in the assessment order dated 28th December, 2016 wherein the assessee has specifically stated that they have not claimed any long term capital gain or they have not claimed any short term capital loss. The assessing officer while completing the assessment has made an addition with regard to the revenue from operation and this is also clear from the income tax computation form appended to the assessment order. If such is the fact, the appellant revenue cannot seek to rely upon the Office Memorandum dated 16th

September, 2019 to state that the delay in filing the appeal should be condoned.

Learned counsel appearing for the respondent submitted that the circular cannot be given retrospective effect. In this regard, reliance was placed in the decision of High Court of Gujarat at Ahmedabad in *Principal Commissioner of Income Tax vs. Anand Natwarlal Sharda in* C/SCA/7520/2021 dated 24th June, 2021.

In our considered view, we need not examine as to whether the Office Memorandum issued by the CBDT dated 16th September, 2019 is prospective or retrospective in operation as we are only considering as to whether sufficient cause has been shown by the revenue for condoning the inordinate delay of 702 days. As mentioned above, if the assessing officer has completed the assessment and accepted the contention of the assessee that they have not made any claim for LTCG or STCL, then the revenue cannot rely upon the Office Memorandum dated 16th September, 2019. If the said memorandum is eschewed, then there is no explanation for the inordinate delay.

Therefore, the application for condonation of delay (IA No.GA/1/2021) is dismissed.

Consequently, the appeal stands rejected.

The issue relating to whether the Office Memorandum dated 16th September, 2019 is prospective or retrospective in operation is left open.

With the dismissal of the appeal, the connected application for stay (IA No.GA/2/2021) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.NathA/s.