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ITAT/133/2021
IA No.GA/2/2021

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

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA

-Versus-

MAAN VARDHAN BAID (HUF)

Appearance:
Mr. Om Narayan Rai, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 20th July, 2022.

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 26th June, 2019 passed by the Income Tax Appellate Tribunal, Kolkata Bench, SMC, Kolkata in ITA No.2156/Kol/2018 for the assessment years 2015-16.

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

i) 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 M/s. GCM Securities Ltd. as *unexplained cash credit u/s 68 of the Income Tax Act, 1961 ?*

ii) Whether the Income Tax Appellate Tribunal erred in ignoring the direct evidence brought on record by the Assessing Officer in the form of modus operandi contrived by the assesses to manipulate the share prices of M/s. GCM Securities Ltd. to record fictitious Long Term Capital Gains of Rs.35,65,842/- exempted from income tax by resorting to round tripping giving rise thereby to the vice of perversity in process of decision making ?

iii) 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 Wind 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 specifics of each and every assessment and corresponding facts which were also discussed by the commissioner of Income Tax (Appeals) ?

iv) Whether the decision of the Income Tax Appellate Tribunal in deleting the addition u/s 68 made by the Assessing Officer on the basis of facts of the investigation of bogus Long Term Capital Gain claim has resulted into perversity?"

We have heard Mr. Om Narayan Rai, learned standing counsel for the appellant/revenue. Though notice had been served on the respondents, none appears for the respondents.

It cannot be disputed before us that the issue involved in the instant case is squarely covered in favour of the revenue by the decision of this Court in *PCIT-V, Kolkata vs. Swati Bajaj,* reported in 2022 SCC Online Cal. 1572.

Thus, following the above decision, the appeal filed by the revenue is allowed and the substantial questions of law are answered in favour of the revenue and the order passed by the Commissioner of Income Tax (Appeals) is restored.

Consequently, the connected application for stay (GA/2/2021) also stands disposed of.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

S.Das A.Sadhukhan
AR(CR)