O – 5

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

ITAT/8/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX – 9, KOLKATA
VS.
SHRI SITA RAM KEDIA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 5, 2022.

Appearance:
Mr. Amit Sharma, Adv.
… for appellant

GA/1/2022

The Court : We have heard Mr. Amit Sharma, learned standing Counsel for the appellant. Though notice has been served on the respondent none appears for respondent.

There is a delay of 135 days in filing the appeal.

We have perused the affidavit filed in support of the application and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. For such reason, the delay in filing the appeal is condoned and the application is allowed.

ITAT/8/2022

This appeal by the revenue filed under Section 260A of the Income Tax Act, 10761 (the act) is directed against the order dated 23rd March, 2021 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata, in I.T.A. No. 2216 (Kol) of 2019 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :

i) Whether on the facts and circumstances of the case and in law, the order of the Learned Income Tax Appellate Tribunal "SMC" Bench, Kolkata is perverse in dismissing the appeal of the Revenue merely on monetary grounds without going into its merits ?

ii) Whether on the facts and circumstances of the case and in law, the order of the Learned Income Tax Appellate Tribunal "SMC" bench, Kolkata is perverse in dismissing the appeal of the Revenue on monetary grounds without giving any cognizance to CBDT bearing F. No. 279/Misc./M-93/2018-ITJ (Pt.), New Delhi, Dated: 16th September, 2019?

iii) Whether on the facts and circumstances of the case and in law, the order of the Learned Income Tax Appellate Tribunal "SMC" bench, Kolkata is correct in upholding the contention of the assessee without taking into account a decision in a similar case pronounced by Hon'ble Apex Court in the case of Sanjay Kaul, (2019) 112 taxman.com 330 (SC) ?

We have heard Mr. Amit Sharma, learned standing Counsel for the appellant/revenue. On perusal of the order passed by the learned Tribunal we find that the appeal filed by the revenue was dismissed on the ground of low tax effect by taking note of the circular issued by the Central Board of Direct Tax (CBDT) dated 20th August, 2019.

Learned standing Counsel appearing for the appellant submitted that the CBDT had issued circular no. 23 of 2019 dated 6th September, 2019 curbing out exception to monetary limit for filing appeal specified in any circular issued under Section 268A of the Act. In terms of the said circular, the monetary limit for filing appeals by the department before this Court has been held to be not applicable in cases where the assessee's claim is bogus, LTCG/STCL through "Penny Stocks" and the appeals should be contested on merits. Though the appeal was dismissed by the learned Tribunal by order dated 23rd March, 2021 it appears that circular dated 6th September, 2019 was not placed before the learned Tribunal for consideration. Therefore, we are of the view that the matter should be remanded back to the Tribunal to consider the effect of circular No. 23 of 2019 after notice to the assessee and in the event the learned Tribunal is of the view the circular would be applicable to the case on hand then the only course to the learned Tribunal is to hear the appeal on merits and take a decision in accordance with law.

For the above reason, the appeal filed by the revenue is allowed. The order passed by the learned Tribunal is set aside and the appeal is restored to the file of the learned Tribunal to be heard and decided afresh.

The appellant/revenue is at liberty to place the circular dated 6th September, 2019 for consideration before the learned Tribunal. The assessee shall be put on notice and shall be heard before any order is being passed by the learned Tribunal.

Accordingly, the appeal stands disposed of and the substantial questions of law are left open. .

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH