OD-7

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

ITAT/10/2022
IA No.GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
Vs
SHYAM KUMAR BAID

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 29th August, 2022

Appearance :
Mr. Prithu Dudheria, 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 26th June, 2019 passed by the Income Tax Appellate Tribunal "SMC" Bench Kolkata (the Tribunal) in I.T.A. No. 388/Kol/2019 for the assessment year 2015-2016.

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

(a) *Whether on the facts and in the circumstances of case and in law the ITAT erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee had indulged in manipulation of the share prices of 'Kailash Auto Finance Limited' with a view to record fictitious Long Term Capital Gains of Rs.23,97,238/- claiming these as exempted from taxation?*

(b) *Whether the ITAT's order was erroneous in law and in fact when it failed to give credence to investigations made by the assessing officer. Investigation Wing of Income Tax Department as well as SEBI on astronomical rise in prices of shares of companies which have no net worth and no financial foundation and thereby failed to apply the test* *of human probability to ascertain the true nature of transactions resulting in bogus LTCG?*

(c) *Whether the ITAT's order was erroneous in law and in fact in accepting the transactions in purchase/sale of shares as genuine, merely on the basis of documents supplied by the assessee, without piercing the veil of the manipulative and fraudulent transactions entered by the assessee in collusion with a cabal of share brokers and entry operators for the purpose of tax evasion?*

(d) *Whether on the facts and in the circumstances of case and in law the ITAT erred in deleting the disallowance of Long Term Capital Gain of Rs.23,97,238/- overlooking the fact 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 Gains of Rs.23,97,238/- and claim bogus exemption ?*

We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant.

Though notice has been served on the respondent and the affidavit of service has been filed, none appears for the respondent.

The order impugned is a common order passed by the learned Tribunal in a batch of cases following its own decision in the case of Swati Bajaj vs. ITO in ITA No.2623/Kol/2018 as against the said decision the appeal was preferred by the Revenue before this Court in ITAT No.6/2022 and the said appeal along with batch of other appeals on the same issue were heard and by judgment dated 14th June, 2022 the appeals were allowed. The said decision is reported in *2022 SCC Online Cal 1572.* Since the learned Tribunal has passed the impugned order following the decision in the case of Swati Bajaj (supra), which decision has been set aside by this Court in the aforementioned batch of cases, the decision of this Court will squarely apply to the case on hand.

In the result, the appeal filed by the revenue is allowed and the order passed by the learned Tribunal is set aside and the order passed by the Commissioner of Income Tax (Appeals) stands restored.

Consequently, the substantial questions of law are answered in favour of the revenue.

The application for stay being IA No.GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.chandra/S.Pal