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ITAT/9/2022
IA No.GA/1/2022
IA No.GA/2/2022

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

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA

-Versus-

RAM NIWAS TAPARIA

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

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

Date : 1st August, 2022.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue.

It is submitted by the learned standing counsel that the matter concerns penny stocks and this Court in a batch of cases has allowed the revenue's appeal. From the material papers we find that the alleged fictitious long term capital gains is Rs.3,35,491/- which was claimed as exemption from tax. Though it is right that we have allowed a batch of appeals by revenue, yet while considering an application under Section 5 of the Act, we are to take note of several factors. We are also conscious of the fact that we have condoned longer period of delay in similar penny stock cases. However, in the instant case, we find that the assessee's alleged fictitious long term capital gain is Rs.3,35,491/-. If the case was not one of penny stock, the revenue could not have filed an appeal because the tax effect in this case is only Rs.64,800/- . Therefore, we make slight departure from our earlier view and note that the delay is inordinate of 991 days in filing the appeal. There is no sufficient explanation.

Therefore, we refuse to exercise our discretion and reject the application for condone of delay. Thus, IA No.GA/1/2022 is dismissed.

Accordingly, the appeal filed by the revenue (ITAT/9/2022) stands rejected. It is made clear that this order shall not be treated as a precedent as it has been passed considering the peculiar facts and circumstances of this case.

Consequently, the application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.