OD-70 & 71

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

ITAT/163/2021
IA NO: GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
VS.
RAKESH KUMAR KHEMUKA

ITAT/172/2021
IA NO. GA/1/2021, GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
VS.
MUKESH KUMAR KHEMUKA

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 20th July, 2022.

Appearance :-
Mr. Soumen Bhattacharjee , Adv.
....for appellant.
Mr. Abhratosh Majumder, Sr Adv.
Mr. Avra Mazumder, Adv.
...for respondent

The Court:- We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant and Mr. Abhratosh Majumder, learned Senior Counsel appearing for the respondent.

GA/1/2021 (ITAT/172/2021)

We find sufficient reasons given in the affidavit in support of the application for condonation of delay of 354 days in preferring the appeal. The delay is condoned. The application for condonation of delay is allowed.

ITAT/163/2021 & ITAT/172/2021

These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act for brevity) against the common order dated 28th August, 2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No. 1483/Kol/2019 and M.A. No. 222/Kol/2019 for the assessment year 2014-2015 and ITA No. 1482/Kol/2019 and M.A. No. 221/Kol/2019 for the assessment year 2014-2015 respectively.

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

> "Whether the Learned Tribunal has committed substantial error in law in granting relief without analysing and appreciating the care that the assesee is involved in organized tax evasion scan through bogus Long Term Capital Gains on Penny Stocks and the carefully within the ambit of exception to monetary limits for filing appeals as prescribed by the Central Board of Direct taxes vide Circular No. 23 of 2019 dated 06.09.2019 ?"

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant and Mr. Abhratosh Majumder, learned Senior Counsel appearing for the respondent assessee.

On 19th February, 2022 we had passed the following order:

"The Court : We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel, appearing for the appellant/revenue and Mr. Abhratosh Majumder, learned Senior Counsel, assisted by Mr. Avra Majumder, learned Counsel for the respondent/assessee.

An important issue is raised in this appeal as regards the applicability of the Circular issued by the CBDT in Circular no.23, dated 6th September, 2019 and the effect of the Office Memorandum dated 16th September, 2019. The High Court of Gujarat in Principal Commissioner of Income-tax vs. Denisha Rajendra Keshwani, reported in (2022)134 taxmann.com 249 (Gujarat) and Principal Commissioner of Income-tax, (Central), Ahmedabad vs. Anand Natwarlal Sharda, reported in (2021)128 taxmann.com 376 (Gujarat) have held that the Office Memorandum dated 16th September, 2019 has to be read along with the Circular No.23, dated 6th September, 2019 and can only have prospective effect.

Learned Senior Counsel appearing for the respondent/assessee submitted that the decisions referred above laid down the correct legal principal and identical question was considered by the High Court of Chattisgarh in the decision reported in (2021) 130 taxmann.com 291 and a Special Leave Petition filed by the revenue was dismissed by the Hon'ble Supreme Court as reported in (2021) 130 taxmann.com 292 (SC).

We find that the order impugned before us has been passed by the Tribunal in a batch of cases. That apart, we also take note of the fact that in several cases revenue has filed appeals with inordinate delay citing the Office Memorandum dated 16th September, 2019. Thus we have to examine as to the effect of the office memorandum as to whether it can be given retrospective effect or not. Since the issue has a larger ramification, appropriate assistance should be given to the learned standing Counsel.

Therefore, we direct the Commissioner of Income tax (Judicial), Kolkata to render the required assistance to the standing Counsel appearing for the Department, supply adequate material and also notes on submission, which can be considered by us on the next hearing date.

List the matter on 21st February, 2022."

In terms of the above direction the Principal Commissioner of Income Tax (Judicial), Kolkata has addressed the learned Standing Counsel for the appellant by letter dated 3rd March, 2022. Along with the said letter, notes on submission dated 7th March, 2022 has been appended. The said notes of submission reads as follows :

"Notes on Submissions

1. The issue before the Hon'ble High Court is seen to be the retrospective or prospective applicability of Central Board of Direct Taxes Circular No. 23 dated 06.09.2019 and Central Board of Direct Taxes OM dated 16.09.2019 by which exception to the tax effect was allowed for filing appeals in

Long Term Capital Gain/Penny Stock in ITAT in respect of appeals which were dismissed by ITAT.

2. I am therefore to submit that in view of the facts of the impugned matter, the exception to penny stock cases from the stipulation of monetary limit would be indeed operable from 16.09.2019 that is only in the cases where appeal was filed on or after 16.09.2019."

In the light of the stand taken by the Department, the monetary limit would be operable from 16th September, 2019, that is, only in cases where appeal was filed on or after 16th September, 2019.

In the light of the above clarification, we find that the order passed by the learned Tribunal does not call for any interference. Accordingly, we hold that there is no substantial question of law arising for consideration in these appeals and they are dismissed.

With the dismissal of the appeals, the connected applications also stand dismissed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

PKD/SN.
AR(CR)