

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

ITAT/47/2022
IA No.GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 5, KOLKATA
VS.
DEEPA AGARWAL

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7th November, 2022

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for the appellant.

Mr. S.M. Surana, Sr. Adv..
...for the respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 21st June, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata (Tribunal) in I.T.A No.2141/Kol/2018 for the assessment year 2011-12.

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 Learned Income Tax Appellate Tribunal 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 'Parichay Investments Limited' with a view to record fictitious

Long Term Capital Gains of Rs.13,59,649/- claiming these as exempted from taxation?

- ii) Whether the Learned Income Tax Appellate Tribunal'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 Long Term Capital Gain?
- iii) Whether the Learned Income Tax Appellate Tribunal'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?
- iv) Whether on the facts and in the circumstances of case and in law the Learned Income Tax Appellate Tribunal erred in deleting the disallowance of Long Term Capital Gain of Rs.13,59,649/- 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.13,59,649/- and claim bogus exemption?

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant and Mr. S.M. Surana, learned senior counsel for the respondent.

After elaborately hearing the learned counsel for the parties and carefully perused the order passed by the Tribunal and the other materials on record, we find that the learned Tribunal has quashed the proceedings on the ground that the reopening of the assessment under Section 147 of the Act was bad in law as the notice issued under Section 148 of the Act is defective. In this regard, the learned Tribunal has referred to the factual position as well as noted the law on the subject and granted relief to the assessee.

As could be seen from the substantial questions raised by the revenue, all the questions are factual in nature and the revenue appears to be not aggrieved by the order of the Tribunal quashing the proceedings on the ground that the reopening of the assessment was bad in law. Thus, we find the question raised before us is entirely factual and cannot be construed to be substantial questions of law.

Hence, the appeal fails and is dismissed.

Consequently, the application for stay being IA No.GA/2/2022 stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)