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

ITAT/51/2022
IA NO. GA/1/2022; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX- 5, KOLKATA
VS.
SHRI ASHOK KR. AGARWALLA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 29th July, 2022
[*Via Video Conference*]

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

GA/1/2022

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant.

There is a delay of 919 days in filing the appeal. The matter relates to Penny Stocks. Identical issue was considered by us where the delay was nearly 1000 days and by a recent order dated 28th March, 2022, after elaborately hearing the standing Counsel for the appellant and the Advocate for the assessee the delay in filing the appeal was condoned. In the said batch of cases one of the cases which is subject matter of the common order passed by the Tribunal, which is impugned before us, is also included. Therefore, following the order dated 28th March, 2022 the delay in filing the appeal is condoned.

ITAT/51/2022

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 27th June, 2019 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata in ITA No. 2511/Kol/2018 for the assessment year 2015-16.

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 'CCL International Limited' with a view to record fictitious Long term capital Gains of Rs.10,32,645/- 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 the case and in law the Learned Income Tax Appellate Tribunal erred in deleting the disallowance of Long Term Capital Gain of Rs.10,32,645/- 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.10,32,645/- and claim bogus exemption?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue.

The learned Tribunal by the impugned order has allowed the batch of appeals by following the earlier decision. The correctness of the decision taken by the Tribunal was challenged before this Court and by judgment reported in 2022

SCC OnLine Cal 1572 the appeals filed by the revenue were allowed. In the instant case, we find there is no distinguishing feature, in fact the Tribunal has extracted its earlier order, the correctness of which was considered in the batch of cases in the said decision which has been reported.

Thus following the above decision the appeal filed by the revenue is allowed and the order passed by the CIT (Appeals) 6, Kolkata dated 11th October, 2018 is restored and the substantial questions of law are answered in favour of the revenue.

Application being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH