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

ITAT/59/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL – 2, KOLKATA
VS.
SHRI MAHABIR PRASAD BANKA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 5, 2022.

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

GA/1/2022

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant. Though notice has been served on the respondent, none appears for the respondent.

There is a delay of 917 days in filing the appeal.

Though the explanation offered is not very satisfactory yet since a legal issue is involved has also been decided in favour of the revenue in a batch of cases this Court exercises its discretion and condone the delay.

Accordingly, the application is allowed.

ITAT/59/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 28th June, 2010 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata being I.T.A. No. 2435/Kol/2018 for the assessment year 2014-2015.

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

a) Whether rejection of claim by the Assessing Officer and Commissioner of Income Tax of the Income Tax (Appeal) of the Assessee under section 10(38) of the Income Tax Act, 1961 under the quire of LTCG by virtue of penny stock scripts at exorbitantly high price of 398% in 20 months and unfortunately disapproved by Income Tax Appellate Tribunal although by the penny stock system assessee have deprived the Central Govt. of several Lakhs.

b) Whether the Income Tax Appellate Tribunal erred in law in reversing the order of Commissioner of Income Tax (Appeal) and Assessing Officer who by their order hold that the assessee only to avoid taxes restored to claim distance transaction in penny stock scrip0ts whereby there is exorbitantly rise in price of unknown share at about 398% in twenty months.

c) It is unfortunate that an ordinary prudent man could understand the device adopted by the assessee to escape higher amount of taxes under the gain LTCG by purchasing the shares of unreputed shares company only to avoid payment of higher amount of taxes under the cover of LTCG and the made devices applied in patently doubtful activities but the Income Tax Appellate Tribunal completely passed a wrong order without considering the provision of law. CBDT Circular No.3/2018 dated 11.7.2018 dated 8.8.2019 and Circular No.23 dated 6.9.2019.

d) Whether the Income Tax appellate Tribunal was wrong is not holding that the assessee by virtue of such false and clandestine trading of shares showing huge gain about 398% in twenty months claimed exemption under section 10[38] of the Income Tax Act, 1961 under the guise of LTCG in the transaction of penny stock scripts of Essar [India] Ltd., only to deprive the Central from getting due amount of taxes.

e) Whether the Income Tax appellate Tribunal has intentionally and passed such an order as about several thousand of Crores of tax erosion cases under the guise of LTCG claiming exemption pending in this state and other states on penny stock scripts.

f) Whether the order of the Income Tax appellate Tribunal is at all a justified order of mechanically passed the order without considering circumstantial evidence rules of “suspicious transactions” and human probabilities as the order of Income Tax appellate Tribunal is perverse.

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant. Though notice has been served on the respondent/assessee, none appears for the respondent. The legal issue involved in the instant case has been considered in the case of *PCIT Vs. Swati Bajaj*; 2022 SCC Online 1572. The said decision squarely applies to the case on hand. Accordingly, following the said decision, the appeal filed by the revenue is allowed and the order passed by the learned Tribunal is set aside.

Consequently, order passed by the Commissioner of Income Tax (Appeals) 10, Kolkata, dated 30th October, 2019 stands restored.

The substantial questions of law are answered in favour of the appellant.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH