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

ITAT/63/2022
IA No.GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS.
SRI ABHAY KR. JAIN

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th November, 2022

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

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

The Court : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the Act) is directed against the order dated 18th June, 2020 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata in ITA No. 1040/Kol/2019 for the assessment year 2011-12.

The revenue has raised as many as four substantial questions of law in paragraph 6 of the Stay application.

However, on going through the order passed by the learned Tribunal, we find all the questions are of no relevance to the case on hand. The issue before the Tribunal was whether the reopening of the assessment was valid in law and whether the ingredients required to be fulfilled for reopening of the assessment under Section 147 of the Act were fulfilled.

The learned Tribunal on appreciation of facts of the case found that the Assessing Officer could not controvert the evidence which were produced by the assessee and during the scrutiny assessment and the explanation offered by the assessee with regard to the addition was not taken note of and based on surmise and conjectures the reopening had been done. Therefore, we find that no substantial question of law arises for consideration in this appeal.

Since the appellant department appears to have treated the case on hand as a regular penny stock matter and they have raised common grounds, those questions are left open as this Court is not inclined to interfere with the order passed by the Tribunal which is entirely proceeded on the factual aspect.

In the result, the appeal filed by the revenue is dismissed.

The application for stay being IA No.GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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