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

ITAT/66/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 13, KOLKATA
VS.
SMT. BABITA DUGAR

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 26, 2022.

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

GA/1/2022

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

Though notice has been served on the respondent and affidavit-of-service has been filed, none appears for the respondent.

There is a delay of 1072 days in filing the appeal. On going through the relevant dates we find the substantial period of the delay is covered during the lockdown period. In these sort of matters initially the department decided not to file any appeal, thereafter circular was issued by the CBDT directing that monetary exempt limit shall not apply to cases of LTCG/STCG involving penny stocks.

In the case of *Principal Commissioner of Income Tax-15, Kolkata Vs. Dinesh Kumar Bansal (HUF)* dated 25.03.2022 in ITAT No. 31 OF 2020 the Court has elaborately considered an identical issue with regard to condonation of delay and the effect of the circular issued by the CBDT.

Thus following the above decision the delay in filing the appeal is condoned.

The application for condonation of delay, GA/1/2022 is allowed.

ITAT/66/2022

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated January 30, 2010 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata (Tribunal) in ITAT/1773(Kol)/2018 for the assessment year 2014-2015. The revenue has raised the following substantial questions of law for consideration :

(i) Whether on the facts and circumstances the decision of the Learned Income Tax Appellate Tribunal in deleting the addition of Rs.9,13,505/- under section 68 of the Act made by the Assessing Officer on the basis of facts and investigation of bogus Long Term capital gain claim has resulted into perversity ?

(ii) Whether on the facts and circumstances the decision of 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 the Income Tax department as well as SEBI on astronomical rise in prices of shares of companies which have not 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 on the facts and circumstances the Learned Income Tax Appellate Tribunal by passing a sweeping order in large number of cases where the basic facts and the facts brought out by the Investigation Wing and the Assessing officer are different amounted to perversity and miscarriage of justice ? The Income Tax Appellate Tribunal being the last fact finding authority was required to go into specifics of each and every assessment and corresponding facts also discussed by the Commissioner of Income Tax (Appeal);

(iv) Whether on the facts and circumstances the order of the Learned Income Tax Appellate Tribunal was erroneous in law and in facts in deleting the addition ignoring the larger scam of organized tax evasion by way of bogus capital gain generated in penny stock;

(v) Whether on the facts and circumstances the Learned Income Tax Appellate Tribunal 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 assessee in collusion with a cable of share brokers and entry operators for the purpose of tax evasion;

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant and though notice has been served on the respondent and affidavit-of-service has been filed none appears for the respondent. It cannot be disputed that an identical issue was considered in a batch of cases in *PCIT Vs. SWATI BAJAJ* 2022 SCC Online Cal 1572 and the appeals filed by the revenue were allowed.

There are no distinguishing features in the case on hand to take a different view.

Thus following the said decision the appeal filed by the revenue is allowed and the substantial questions of law are answered in favour of the revenue.

GA 2 of 2022 stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH