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

ITAT/176/2021
IA No.GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-13, KOLKATA
VS.
SHRI VIVEK MADHOGARIA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 20th July, 2022

<u>*Appearance*</u> :
Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

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 26th June, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No.2461/[Kol]/2018 for the assessment year 2015-16.

The revenue has raised the following substantial question of law for consideration.

i) Whether the learned tribunal has committed substantial error in law deleting the addition under section 68 of the Income Tax Act, 1961 made by the assessing officer on the basis of facts and investigation as to claim of bogus Long Term Capital Gain caused the impugned order as perverse ?

ii) Whether the learned tribunal has committed substantial error in law by passing an order in large number of cases where the basic facts and facts brought out by the investigation wing and the assessing officer are completely different amounted to perversity and miscarriage of justice ?

iii) Whether the learned tribunal has committed substantial error in law by not giving any 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 not much known companies which have no net worth and no financial stability thereby failed to ascertain the true nature of transaction resulting into claim of bogus Long Term Capital Gain ?

iv) Whether the learned tribunal has committed substantial error in law by passing a non speaking order without considering the fact and circumstances of the case ?

v) Whether the learned tribunal has committed substantial error in law in deleting the addition of Rs.12,37,197/- ignoring the larger scam of organized tax evasion by way of bogus capital gain generated in penny stock ?

We have heard the learned standing Counsel appearing for the appellant. Though notice has been served on the respondent none appear on behalf of the respondent.

It cannot be disputed that the issue involved in this appeal is squarely covered by the decision in the case of *PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA-VERSUS- SWATI BAJAJ AND ORS.*; reported in 2022 SCC Online Calcutta 1572. In fact, the tribunal in the impugned order had followed the decision in Swati Bajaj which has been reversed by this court in the aforementioned decision.

Thus, following the said decision the appeal filed by the revenue is allowed and the questions of law suggested by the revenue are answered in favour of the revenue and the order passed by the first Appellate Authority stands restored.

Accordingly, stay application being GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd.