OD-13

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

ITAT/98/2022
IA No: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-13, KOLKATA
VS.
PREMLATA AGARWAL

BEFORE :

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

Appearance :
Mr. Soumen Bhattacharjee, Adv.
... for appellant
Ms. Paramita Sarkar, Adv.
Ms. Asha G. Gutgutia, Adv.
... for respondent

GA/1/2022

The Court : We have heard Mr. Soumen Bhattacharjee, learned Counsel for the appellant and Ms. Paramita Sarkar, learned Advocate, led by Ms. Asha G. Gutgutia, learned Advocate for the respondent.

There is a delay of 950 days in filing the appeal. On going through the relevant dates we find the substantial period of the delay is covered by 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 is allowed.

ITAT/98/2022

This appeal by the revenue 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 (Tribunal) in ITA No. 1808 (Kol) of 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 of the case the decision of the Income Tax Appellate Tribunal in deleting the addition under section 68 of the Income Tax Act, 1961 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 of the case 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 Wing of the 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 hereby 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 of the case 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 ?

iv) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal being the last fact finding was required to go into specifics of each and every assessment and corresponding facts also discussed by the Commissioner of Income Tax (Appeal) ?

v) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal being fact finding authority was required to go into specified of each and every assessment and corresponding fact also discussed by the Commissioner of Income Tax (Appeal) and as such the order of the Learned Tribunal is perverse and the same is not maintainable in law ?

We have heard Mr. Soumen Bhattacharjee, learned Counsel for the appellant and Ms. Paramita Sarkar, learned Advocate, led by Ms. Asha G. Gutgutia, learned Advocate 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.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

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