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

ITAT/100/2022
IA NO: GA/1/2022 ; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX - 5, KOLKATA
VS.
ASHOK KUMAR REDH (HUF)

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : AUGUST 05, 2022.

Appearance :-
Mr. Tilak Mitra, Adv.
....for appellant.

The Court :- We have heard Mr. Tilak Mitra, learned standing Counsel appearing for the appellant/revenue.

Notice has been served on the respondent/assessee and the learned Standing Counsel has produced a copy of the track report, which shall be filed along with affidavit-of-service during the course of the day and shall be taken on record.

There is a delay of 950 days in preferring this appeal.

In a batch of cases we have considered the issue elaborately and condoned the delay in *PCIT – 15, KOLKATA Vs. DINESH KUMAR BANSAL (HUF),* ITAT No. 31 of 2020. Following the said decision, the delay in filing the appeal is condoned. The application for condonation of delay being GA 1 of 2022 stands allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 26^{th} June, 2019 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata in I.T.A No.2331 and (Kol) of 2018 (Tribunal) for the assessment year 2014-15.

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

i) Whether on the facts and the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee had indulged in manipulation of the share prices of M/s. Mishka Finance & Trading Ltd. with a view to record fictitious Long Term Capital Gains of Rs. 20,28,177/- claiming these as exempt from taxation ?

ii) Whether on the facts and the circumstances of the case and in law the Learned Income Tax Appellate Tribunal suffers from perversely, as it ignores the facts brought on record establishing manipulation of share prices M/s. Mishka Finance & Trading Ltd. as part of colourable device to generate fictitious LTCG with the aim to evade taxes due ?

iii) Whether on the facts and the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in deleting the disallowance of Long Term Capital Gain Rs. 20,28,177/- overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains of Rs.20,28,177/- and claim bogus exemption ?

We have heard Mr. Tilak Mitra, learned standing Counsel appearing for the appellant/revenue.

Though notice has been served on the respondent, none appears for the respondent.

We find from the impugned order, the learned Tribunal has allowed the assessee's appeal along with the batch of cases. The order impugned has been passed following the decision of the Tribunal in the case of *Swati Bajaj Vs. I.T.O., Kolkata* in I.T.A. No.

2623/Kol/2018. Against the said decision the revenue filed appeal before this Court in ITAT/06/2022 and the appeals were allowed and the decision is reported in 2022 SCC Online 1572.

Following the said decision, the appeal is allowed and the substantial questions of laws are answered in favour of the revenue.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH
AR(CR)