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

ITAT/101/2022
IA NO: GA/1/2022 ; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX - 5, KOLKATA
VS.
SHRI RAJENDRA KUMAR HIRAWAT

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.

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

26th June, 2019 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata in I.T.A No.2628/Kol/2018 (Tribunal) for the assessment year 2014-15.

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

i) Whether in 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 in the form of Modus Operandi contrived by the accommodation entry providers to manipulate the Share prices of Nikki Global Finance Ltd. to record fictitious LTCG/STCL for the beneficiaries and enabling the assessee to claim Short Term Capital Loss o Rs.651950/- with a view to set the same off against taxable Long Term Capital gains earned by the assessee thereby giving rise to the vice of perversity in the process of decision making ?

ii) Whether in the facts and circumstances of the case and in law Learned Income Tax Tribunal erred in canceling the disallowance of Short term Capital Loss of Rs.651950/-, overlooking the facts that entire transactions were stage managed with object to facilitate the assessee to claim set off fictitious short term capital loss against the taxable Long term Capital gains earned during the Assessment year in question, thereby, giving rise to the vice of flaw in the decision making process ?

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

Though notice has been served on the respondent they are not represented, 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 said decision is reported in 2022 SCC Online 1572.

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

The stay application being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH
AR(CR)