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

ITAT/104/2022
IA No.GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -5, KOLKATA
VS.
SHRI POONAM CHAND DUGAR

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th November, 2022

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

The Court : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the Act, for brevity) is directed against the order dated 21st June, 2019 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No.2419/Kol/2018 for the assessment year 2014-15.

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

i) Whether on the fact and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer in the form of Modus Operandi contrived by accommodation entry providers manipulating in the Share prices of Comfort Fincap Ltd. and availed by the Assessee to record fictitious Short Term Capital

Loss of Rs.1897566/- with a view to set the same off against other taxable Capital gains earned by the assessee and 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 deleting the disallowance claim of Short term Capital Loss of Rs.1897566/- overlooking the facts that entire transaction were stage managed with object to facilitate the assessee to claim set off of the artificially booked short term capital loss against taxable Capital gains earned during the Assessment year in question, thereby, giving rise to the vice of flaw in the decision making process ?

iii) Whether in the facts and circumstances of the case and in law Learned Income Tax Tribunal erred in deleting the disallowance of claim of expenditure U/s. 57(iii) of the Income Tax Act, 1961 amounting to Rs.375898/- without speaking adjudication in its Order?

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.

On going through the order passed by the learned Tribunal, we find that the legal issue involved in this appeal had been answered by this Court in favour of the revenue in the case of Principal Commissioner of Income Tax-5, Kolkata vs. Swati Bajaj in ITAT No.6 of 2022 dated 14th June, 2022 and the said decision is reported in 2022 SCC Online 1572 (Cal.). In fact, the learned Tribunal had followed one of its earlier decisions and the reasoning in the said decision was also similar to the other cases dealt by this Court in the case of Swati Bajaj etc. batch.

Thus, following the said decision, this appeal is allowed and the order passed by the learned Tribunal is set aside and the order passed by the Commissioner of Income Tax(Appeals) stands restored and the substantial questions of law are answered in favour of the revenue.

The application for stay being IA No.GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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