OD-10

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

ITAT/109/2022
IA No. GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
SHRI SITARAM KEDIA

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd November, 2022

Appearance :

Mr. Soumen Bhattacharjee, Adv.
...for the appellant

The Court : 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 23rd March, 2021 passed by the Income Tax Appellate Tribunal, "SMC" Bench (Tribunal) in ITA No. 2217/Kol/2019 for the assessment year 2013-14.

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

i) Whether the order of the Learned Tribunal is perverse in dismissing the appeal of the Revenue without going into its merits ?

ii) Whether the order of the Learned Tribunal is perverse in dismissing the appeal of the Revenue without giving any cognizance to CBDT OM bearing F No. 279/Misc./M-93/2018-ITJ(pt), dated 16.09.2019 ?

iii) Whether the Learned Tribunal has committed substantial error in law in upholding the contention of the assessee without taking into account decision in similar case in the matter of Sanjay Kaul (2019/112 taxmann.com 330 (SC) ?

iv) Whether the Learned Tribunal has committed substantial error in law by not appreciating that the assessee could not substantiate the genuineness, creditworthiness of the transaction to prove that it had not indulged in dubious share transaction meant to account for undisclosed income in the garb of Long Term Capital Gain (LTCG) and the same comes under the purview of unexplained cash credit under Section 68 of the Income Tax Act, 1961 ?

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue.

Though notice had been served on the respondent, none appeared for the respondent even much earlier when the application under section 5 of the Limitation Act was considered, the Court noted that though the respondent had been served, they did not choose to appear before the Court. Therefore, we have proceeded to decide the matter after hearing the learned standing counsel for the appellant.

The learned Tribunal has not gone into the merits of the matter but has dismissed the appeal of the revenue on the ground of low tax effect. The contention raised before us is that the Tribunal ought to have taken note of the Circular issued by the CBDT dated 16th September, 2019 and if the same had been taken note of then the appeal should have been heard on merits and not rejected on the ground of monetary limit. The revenue also seeks to place reliance on the decision of the Hon'ble Supreme Court in the case of Sanjay Kaul, (2019)112 taxmann.com 330(SC). From the order passed by the learned Tribunal we find that liberty had been granted to the revenue to move the Tribunal if there is any exception which comes to the notice of the revenue at a subsequent date. In the light of the liberty granted by the learned Tribunal, we are of the view that the appellant should be permitted to place all the facts including the Circular issued by the CBDT dated 16th September, 2019 so as to enable the Tribunal to take appropriate decision.

For the above reason, the appeal is allowed.

The impugned order is set aside and the matter is remanded to the Tribunal for fresh consideration in accordance with law.

Consequently, the substantial questions of law are left open.

The stay application GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/SN.