OD – 3

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

ITAT/112/2022
IA NO. GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA
Versus
SATISH KUMAR LAKHMANI

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 22, 2022.

Appearance:
Mr. Tilak Mitra, Adv.
...for appellant
Mr. Subhas Agarwal, Adv
...for respondent

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 21.4.2021 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA No.260/Kol/2019 for the assessment year 2014-2015.

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

"i] Whether the learned Tribunal has erred in facts and law and failed to appreciate that the assessee could not substantiate the genuineness of the transaction to prove that it had not in dubious share transaction meant to account for undisclosed income in the garb of Long Term Capital Gain [LTGC] to claim exemption under section 10[38] of the Act ?

ii] Whether the learned Tribunal has erred in fact and law while allowing the assessee's appeal of claim of exemption under section 10[38] without holding that the off line transaction of purchase and sale of shares of penny stock companies namely Unno Industries Ltd. was adventure in nature of trade, thus same was to be taxed as business income ?

iii] Whether the learned Tribunal has erred in fact and law in overlooking the documentary evidence in depth and in light of conduct of the assessee and other surrounding circumstances in order to see whether the assessee is liable to the provisions of section 68 or not?"

We have heard Mr. Tilak Mitra, learned standing Counsel for appellant/revenue and Mr. Subhas Agarwal, learned Advocate for the respondent.

We find from the order passed by the learned Tribunal that the assessee's appeal had allowed following the decision of the Coordinate Bench of the learned Tribunal in the case of Ritin Lakhmani & Ors. vs. Principal Commissioner of Income Tax 9, Kolkata in ITA Nos. 41 to 47/Kol/2019 and allowed the appeal filed by the assessee. The revenue had preferred the appeal against the said order before this court in ITAT No.127/2022 which was dismissed by judgment dated 22.11.2022. The operative portion of the order reads as follows :

"In more or less identical circumstances in the case of Principal Commissioner of Income Tax, Durgapur Vs. M/s. Sinforte Pvt.Ltd. in ITAT No.104/2019 dated 7.1.2022 the court had dismissed the appeal filed by the revenue on the ground that the PCIT in order to exercise jurisdiction under section 263 of the Act himself exercised jurisdiction at the instance of the assessing officer which is against the provision of the law. This decision supports the case of the respondent assessee. Hence, for the above reasons, we are of the view that the order passed by the learned tribunal on the first ground, namely with regard to the correctness of the exercise of power under section 263 of the Act has to be affirmed and, accordingly, the appeal filed by the revenue is dismissed and the substantial question of law suggested by the revenue are not required to be decided in the instant case.

For the reasons set out by us above and, accordingly, the same are left open. "

Thus, following the above decision the appeal filed by the revenue is dismissed on identical grounds as mentioned in the above quoted judgment and order.

The affidavit in reply filed in court today be kept with the record.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.