

OD-16

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

ITAT/113/2022
IA No: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS.
AMIT KUMAR JAIN

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA

Date : 26th September, 2022

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

GA/1/2022

The Court : We have heard Mr. Tilak Mitra, learned Counsel for the appellant.

Though notice has been served on the respondent and affidavit of service has been filed, none appears for the respondent.

There is a delay of 1081 days in filing the appeal. On going through the relevant dates we find the substantial period of the delay is during the lockdown period. In these sort of matters, initially the department decided not to file any appeal, thereafter Circular was issued by the CBDT directing that monetary exempt limit shall not apply to cases of LTCG/STCG involving penny stocks.

In the case of *Principal Commissioner of Income Tax-15, Kolkata Vs. Dinesh Kumar Bansal (HUF)* dated 25.03.2022 in ITAT No. 31 OF 2020, the Court has elaborately considered an identical issue with regard to condonation of delay and the effect of the Circular issued by the CBDT.

Thus following the above decision, the delay in filing the appeal is condoned. The application for condonation of delay is allowed.

ITAT/113/2022

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 28th February, 2019 passed by the Income Tax Appellate Tribunal “SMC” Bench, Kolkata (Tribunal) in ITA No. 2232/Kol/2018 for the assessment year 2014-2015. The revenue has raised the following substantial questions of law for consideration :

- i) Whether the Learned Income Tax Tribunal has committed substantial error in law by not admitting that unexplained Long Term Capital Gains (LTCG) comes under the purview of unexplained cash – credits under Section 68 of the Income Tax Act, 1961 involving proceedings under Section 143(3) of the Income Tax Act 1961 and suspicious transaction in shares cannot be exempted under Section 10(38) of the Act?
- ii) Whether the Learned Tribunal has committed substantial error in law by deleting the addition of undisclosed income ignoring the larger scam or organized tax evasion by way of bogus capital gain generated in penny stock?
- iii) Whether the Learned Tribunal has committed substantial error in law by directing the Assessing Officer to allow the claim of Long Term Capital Gain (herein after referred as LTCG) amounting to Rs.39,49,493/- which effectively negated the addition of Rs.39,76,500/- as unexplained cash credit under Section 68 of the Income Tax Act, 1961 and deleted the addition of Rs.1,19,295/- as commission paid outside the books of

account under Section 69C of the Income Tax Act, 1961 in the case of assessment for the Assessment Year 2014-15, when such claim was fraudulent and not to be allowed and the assessee has paid Commission outside books for availing the bogus Long Term Capital Gain in the case of the assessee for the Assessment year 2014-15 when such claim was fraudulent and not to be allowed?

- iv) Whether the Learned Tribunal has committed substantial error in law in deleting the addition under section 68 of the Act, 1961 amounting to Rs.39,76,500/- on account of disallowance of the claim of LTCG at Rs.39,49,493/- treating the same as fraudulent overlooking the fact that the entire transactions were stage managed with the objective of facilitate the assessee to plough back its unaccounted income in the form of sale proceeds related to fictitious LTCG and claim bogus exemption, thereby giving rise to the vice of flaw in the decision making ?
- v) Whether the Learned Tribunal has committed substantial error in law in taking only one lead case and decided to quash the addition of other cases without going into any specific details of the facts of the remaining cases and without considering the report of Bombay Stock Exchange & SEBI which amounts to severe perversity ?
- vi) Whether the Learned Tribunal has committed substantial error in law by not appreciating that the assessee could not substantiate the genuineness, credit worthiness of the transaction to prove that it had not indulged in dubious share transactions meant to account for undisclosed income in the garb of Long Term Capital Gain (LTCG) to claim exemption under Section 10(38) of the Act ?

- vii) Whether the order of the Learned Tribunal is perverse in overlooking that it is the duty of the Tribunal to scratch surface and prove documentary evidence in depth in light of conduct of assessee and other surrounding circumstances in order to see whether the assessee is liable to provisions of Section 68 of the Income Tax Act or not ?
- viii) Whether the Learned Tribunal has committed substantial error in law by not considering that where again sum is credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year ?
- ix) Whether the Learned Tribunal has committed substantial error in law by not holding that the Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which would justify addition of the said amount to the income of the assessee ?
- x) Whether the Learned Tribunal has committed substantial error in law when the Learned Tribunal failed to give credence to investigations made by the Assessing Officer, Investigation Wing of the Income Tax Department as well as SEBI on astronomical rise in price of shares of companies which have no net worth and no financial foundation and thereby failed to apply the test of human probability to ascertain the true nature of transactions resulting the bogus Long Term Capital Gain (LTCG) ?

- xi) Whether the Learned Tribunal has committed substantial error in law in accepting the transactions in purchase/sale of penny stock as genuine, mainly in the basis of documents supplied by the assessee without piercing the veil of the manipulative and fraudulent transactions entered by assessee in collusion with a help share brokers and entry operators for the purpose of tax evasion ?

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

It cannot be disputed that an identical issue was considered in a batch of cases in *PCIT Vs. SWATI BAJAJ* 2022 SCC Online Cal 1572 and the appeals filed by the revenue were allowed.

There are no distinguishing features in the case on hand to take a different view.

Thus following the said decision, the appeal filed by the revenue is allowed and the substantial questions of law are answered in favour of the revenue.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)