OD-19

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

ITAT/161/2022
IA No.: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 13, KOLKATA
VS.
SHRUTI DHOOT

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st October, 2022

Appearance :
Mr. Soumen Bhattacharjee, Adv.
... for appellant

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue.

Though notice has been served on the respondent, none appears for the respondent.

Affidavit of service filed today be taken on record.

There is a delay of 1069 days in filing the appeal. Identical issue was considered by this Court and the delay in filing the appeal was condoned. Apart from that the appeals filed by the revenue on an identical issue were allowed in batch of cases reported in *2022 SCC Online Cal 1572,* therefore we exercise discretion and condone the delay in filing the appeal.

ITAT/161/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the common order dated 15th March, 2019, passed by the Income Tax Appellate Tribunal, Kolkata Bench "SMC" Kolkata, in I.T.A. No. 2289/Kol/2018 for the assessment year 2015-16.

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

i) Whether the Learned Tribunal in deleting the addition under Section 68 of the Income Tax Act, 1961 made by the Assessing Officer on the basis of facts and investigation of bogus LTCG Claim has resulted into perversity ?

ii) Whether the Learned Tribunal has committed substantial error in law when it failed to give credence to investigation made by the Assessing Officer, Investigation Wing of the Income Tax Department as well as SEBI on astronomical rise in prices 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 transaction relating in bogus Long Term Capital Gain ?

iii) Whether the Learned Tribunal has committed substantial error in law by passing a common order in large number of cases where the basic facts and the facts brought out by the Investigation Wing and the Assessing Officer are different amounted to perversity and miscarriage of justice wherein the Learned ITAT being last fact finding authority was required to go into specifies of each and every assessment and corresponding facts discussed by the CIT (A) ?

iv) Whether in the similar substantial question of law has been decided in favour of Revenue by the Hon'ble Division Bench, High Court at Calcutta reported in 2022 SCC Online Cal 1572 ?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue. None has appeared for the respondent/assessee.

It cannot be disputed that the legal issue which has been raised in this appeal is squarely covered in favour of the appellant/revenue by the decision reported in 2022 SCC Online Cal 1572. Apart from that we find that the learned Tribunal had allowed in a bunch of appeals filed by the assessee and as against several of those appeals the revenue had preferred appeals and those appeals were allowed. Thus, following the above decision, the appeal filed by the revenue is allowed and the substantial questions of law are answered against the revenue.

The stay application GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN