

OD-25

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

ITAT/162/2022
IA No: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS.
SHYAM KUMAR AND SONS HUF

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA

Date : 26th September, 2022

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

GA/1/2022

The Court : We have heard Mr. Soumen Bhattacharjee, learned Counsel for the appellant. Though notice was served on the respondent, none appears for the respondent.

There is a delay of 984 days in filing the appeal. On going through the relevant dates we find the substantial period of the delay is covered by 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/162/2022

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 26th June, 2019 passed by the Income Tax Appellate Tribunal “SMC” Bench, Kolkata (Tribunal) in ITA No. 1052 (Kol)/2019 for the assessment year 2015-2016. The revenue has raised the following substantial questions of law for consideration :

- i) Whether on the facts and circumstances of the case and in law the Hon’ble Income Tax Appellate Tribunal erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer to establish that the assessee had indulged in manipulation of the share prices of ‘Kailash Auto Finance Limited’ with a view to record fictitious Long Term Capital Gains of Rs.19,21,609/- claiming these as exempted from taxation?
- ii) Whether the Hon’ble Income Tax Appellate Tribunal’s order was erroneous in law and in fact when it failed to give credence to investigations made by the assessing officer. Investigation Wing of Income Tax Department as well as SEBI on astronomical rise in prices 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 in bogus LTCG?

- iii) Whether the Hon'ble Income Tax Appellate Tribunal's order was erroneous in law and in fact in accepting the transactions in purchase/sale of shares as genuine, merely on the basis of documents supplied by the assessee, without piercing the veil of the manipulative and fraudulent transactions entered by the assessee in collusion with a cabal of share brokers and entry operators for the purpose of tax evasion?
- iv) Whether on the facts and in the circumstances of case and in law the Hon'ble Income Tax Appellate Tribunal erred in deleting the disallowance of Long Term Capital Gain of Rs.19,21,609/- overlooking the fact that the entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains of Rs.19,21,609/- and claim bogus exemption.?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel 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.)