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

ITAT/165/2022
IA No.: GA/1/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-13, KOLKATA
VS.
PAWAN KUMAR GUPTA

BEFORE :

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

<u>*Appearance*</u> :
Mr. Prithu Dudhoria, Adv.
... for appellant
Mr. Subash Agarwal, Adv.
... for respondent

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 February 02, 2022 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No.286/Kol/2021 for the assessment year 2012-13.

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

i) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law 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 "M/s. Blue Print Securities Limited" with a view to record fictitious Long Term Capital Gains of Rs. 9,21,000/- claiming these as exempt from taxation ?

ii) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in considering the fact that Income Tax Appellate Tribunal's order suffers from perversity as it ignores the fact brought on record establishing manipulation of share prices "M/s. Blue Print Securities Limited" as part of colourable device to generate fictitious Long Term Capital Gain with the aim to evade taxes due ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned Counsel for the respondent/assessee.

The short issue which falls for consideration in this appeal is whether the learned Tribunal was right in allowing the assessee's appeal on the ground that the authority namely, the Assessing Officer as well as the Commissioner of Income tax (Appeals) did not examine the correctness of the stand taken by the assessee that the assessee has not dealt with the alleged scripts. Before the learned Tribunal the revenue could not point out as to how both the authorities were justified in making the impugned addition when the assessee had taken a categorical stand that he has not dealt with the alleged scripts. Therefore, the learned Tribunal held that the CIT(Appeals) had mechanically passed the order without even considering the facts.

Thus, we find that there is no question of law, much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal is dismissed.

The stay application being GA/1/2022 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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