OD-31

ITAT/199/2022
IA No.GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX-5, KOLKATA

-Versus-

M/S. SANJIV SHROFF (HUF)

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

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 20th December, 2022.

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 28th November, 2018 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.971/Kol/2017 for the assessment year 2014-15.

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

(i) Whether the Learned Income Tax Appellate tribunal erred in ignoring the direct and

circumstantial evidence brought on record by the Assessing Officer in the form of modus operandi contrived by accommodation entry operators to manipulate the share prices of Kailash Auto Finance Limited enabling the assessee to record fictitious Long Term Capital Gain of Rs.37,03,514/- and claim the same as exempted from income tax giving rise thereby to the vice of perversity in the process of decision making ?

(ii) Whether the Learned Income Tax Appellate tribunal erred in deleting the disallowances of assessee's claim of Long Term Capital Gain of Rs.37,03,514/- overlooking the facts that the entire set of related 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.37,03,514/- and claim bogus exemption u/s.10(38) of the Income Tax Act, thereby giving rise to the vice of flaw in the decision making processes ?

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue. Though the respondent had been served, none appears for the respondent.

It cannot be disputed that the substantial questions of law which have been raised by the revenue in this appeal, were considered in a batch of cases and the appeals filed by the revenue are allowed namely, *Principal Commissioner of*

Income Tax-V vs. Swati Bajaj reported in 2022 Scc Online Cal 1572.

Thus, following the said decision, this appeal filed by the revenue (ITAT/199/2022) is allowed and the substantial questions are answered in favour of the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./ S.Das