

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

ITAT/239/2023
IA NO: GA/1/2023, GA/2/2023
MANISH BAID
VS
INCOME TAX OFFICER, WARD 22(4) KOLKATA AND ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2023

Appearance :
Mr. Rajarshi Chatterjee, Adv.
...for appellant
Mr. Amit Sharma, Adv
...for respondent

The Court : - We have heard learned Counsel on either side.

There is a delay of 163 days in filing the appeal. We are satisfied with the explanation offered by the petitioner and the delay in filing the appeal is condoned and the application GA/1/2023 is allowed.

The assessee has preferred this appeal under Section 260A of the Income Tax Ac 1961 challenging the order dated 10.11.2022 passed by the Income Tax Appellate Tribunal A Bench, Kolkata (the Tribunal) in ITAT No. 530/Kol/2018 for the assessment year 2014-15 and the order dated 35 of 2023 in MA 7/Kol/2023. The assessee raised the following substantial questions of law for consideration:

- a) Whether the Learned Tribunal erred in law in failing to take into consideration that the shares of the company sold by the appellant is creditworthy, having made preferential issue of shares of Rs.33 Crores, in the Assessment year 2013-2014 which has been accepted as genuine by the department in the assessment proceeding of the company.
- b) Whether the Learned Tribunal failed to take into consideration that the shares of the company which was sold by the appellant was widely held by the parties.
- c) Whether the Tribunal erred in failing to take into consideration that the shares of the company sold by the appellant is not a sham which can be corroborated from the fact that on this occasions, the company issued bonus shares.

After we have elaborately heard the learned Counsel for the parties and carefully considered the materials placed on record, we find that the learned Tribunal after examining the facts found that the assessee during the assessment year in question has claimed exemption of income of Rs.7,05,62,394/- from the sale of equity shares of MCL Research and Financial Services Limited and noted that the share price of the said company witnessed a drastic and sharp increase in a very short span of time without having sufficient reason for such increase in price. The Assessing Officer while completing the assessment took note of the information from the Directorate of Income Tax, Investigation, Kolkata, which unearthed large scale scam in tax evasion after

conducting search and seizure operations. Thus, on facts the Tribunal concluded that the claim of long term capital gain from the sale of such shares was bogus. The Tribunal rightly took note of the decision of this Court in the case of *PCIT-5 vs. Swati Bajaj*, 2022 SCC Online Cal 1572 and dismissed the appeal of the assessee.

We find no good grounds to take a different decision than what was taken by the learned Tribunal on facts as well as on law. Thus, the appeal filed by the assessee is dismissed and the substantial questions of law are answered against the assessee.

The stay application GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)