ORDER O – 41

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

ITA/13/2012
COMMISSIONER OF INCOME TAX, CENTRAL – I
VERSUS
AVINASH AGARWAL

BEFORE:
The Hon'ble Justice SURYA PRAKASH KESARWANI
The Hon'ble Justice RAJARSHI BHARADWAJ
Date : 15th January 2024.

Appearance:

Mr. Amit Sharma, Advocate
… for appellant.

Mr. Saumya Kejriwal, Advocate
Ms. Ananya Rath, Advocate
Mr. Navin Mittal, Advocate
… for respondent.

1. Heard learned counsel for the parties.

2. This appeal relates to assessment years 2005-06, 2006-07 and 2007-08. The tax effect involved in the three appeals before the Tribunal are Rs.47,71,530/- for assessment year 2005-06, Rs.7,71,250/- for assessment year 2006-07 and Rs.5,78,131/- for assessment year 2007-08. Thus, the tax involved in the aforesaid three assessment years involved in this appeal are much below the tax limit provided for filing the appeal under Circular No.17/2019 dated 08.08.2019.

3. Learned counsel for the appellant submits that this case falls under the exception given in the said circular inasmuch as the controversy of

penny stock is involved. He admits that this appeal was filed in the year 2011 and not after the circular dated 16.09.2018 carving out exceptions for filing appeal in matters of penny stock even though the tax effect is below the limit provided in the circular for filing appeal by the Income Tax Department.

4. We find that similar issue arose before a co-ordinate Bench of this Court in ITAT/163/2021 (Principal Commissioner of Income Tax-I, Kolkata vs. Rakesh Kumar Khemuka) which was dismissed by order dated 20.07.2012 observing as under :

> *"In terms of the above direction the Principal Commissioner of Income Tax (Judicial), Kolkata has addressed the learned Standing Counsel for the appellant by letter dated 3rd March, 2022. Along with the said letter, notes on submission dated 7th March, 2022 has been appended. The said notes of submission reads as follows :*
>
> *"Notes on Submissions*
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> 1. *The issue before the Hon'ble High Court is seen to be the retrospective or prospective applicability of Central Board of Direct Taxes Circular No. 23 dated 06.09.2019 and Central Board of Direct Taxes OM dated 16.09.2019 by which exception to the tax effect was allowed for filing appeals in Long Term Capital Gain/Penny Stock in ITAT in respect of appeals which were dismissed by ITAT.*
> 2. *I am therefore to submit that in view of the facts of the impugned matter, the exception to penny stock cases from the stipulation of monetary limit would be indeed operable from*

16.09.2019 that is only in the cases where appeal was filed on or after 16.09.2019."

In the light of the stand taken by the Department, the monetary limit would be operable from 16th September, 2019, that is, only in cases where appeal was filed on or after 16th September, 2019.

In the light of the above clarification, we find that the order passed by the learned Tribunal does not call for any interference. Accordingly, we hold that there is no substantial question of law arising for consideration in these appeals and they are dismissed.

With the dismissal of the appeals, the connected applications also stand dismissed."

5. Respectfully following the judgment of the co-ordinate Bench in the case of Rakesh Kumar Khemuka(supra) this appeal (ITA 13/2012) is also dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar / As.