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

ITAT/39/2024
IA NO: GA/1/2024
MANOJ JAIN (HUF)
VS.
INCOME TAX OFFICER & ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th June, 2024

Appearance :
Mr. Pranit Bag, Adv.
Mr. Anuj Kumar Mishra, Adv.
Mr. Balaram Patra, Adv.
...for appellant.
Mr. Amit Sharma, Adv.
...for respondents.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 21, 2023, passed by the Income Tax Appellate Tribunal, `A' Bench, Kolkata (Tribunal) in ITA No.1782/Kol/2018 for the assessment year 2015-16.

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

i) Whether the Tribunal was justified in law in holding in the present facts and circumstances in upholding the order passed by CIT(A) by recording that no binding precedent was placed in favour of the assessee and that the decisions passed by a Coordinate Bench in Shyam Sunder Bajaj in I.T.A. 2552/Kol/2018 decided on October 17, 2022 and Swati Bajaj (supra) were applicable and thereby dismissing the grounds raised by the assessee for the assessment year 2015-16 ?

ii) Whether the Tribunal has erred in failing to consider that the facts of the present case are different from the facts in the judgement and decision rendered by this Hon'ble Court on Bajaj and others, reported in (2022) 139 Taxmann.com 351 (Cal) since the decision in Swati Bajaj was rendered in a factual scenario involving off market transactions and wherefrom inference cannot be drawn in the present facts and circumstances ?

iii) Whether the Tribunal has failed to consider the report of the Securitisation and Exchange Board of India in its proper perspective since the said report does not name the assessee/appellant herein and reaffirms the submissions made by the appellant in the appellate proceedings that the appellant was a mere investor and could not be held to be colluding with entry operators for rigging of operation or dealing with the alleged penny stock companies ?

We have heard Mr. Pranit Bag, learned standing Counsel appearing for the appellant and Mr. Amit Sharma, learned Counsel appearing for the respondents.

We have elaborately heard the learned Advocates appearing for the appellant and the learned standing Counsel for the respondent department and have carefully gone through the order passed by the Assessing Officer, the Commissioner of Income Tax (Appeals) [CIT(A)] as well as the learned Tribunal. On going through the order passed by the CIT(A), we find that the CIT(A) has examined the factual aspects with regard to the trading of shares in a company called, Sulabh Engineers & Services Ltd. After examining the facts, the CIT(A) brought out the modus operandi and has recorded finding as to how the claim for long-term capital gain is a bogus claim. The conclusion arrived at by the Tribunal has also been supported by various decisions of the courts including of this Court in the case of Swati Bajaj vs. Director of Income Tax, (2022) 139 Taxmann.com 351 (Cal.).

Learned Counsel for the appellant would strenuously contend that certain documents were not available with the assessee at the relevant point of time and subsequently on being advised, applications were made under the Right to Information Act and information was sought for from several people and documents have been obtained which have been enclosed in the stay petition from page 120 onwards. It is the submission of the learned Counsel for the appellant that these documents should be permitted to be placed before the learned Tribunal or before the CIT(A) so that the factual aspects can be re-examined and a correct conclusion can be arrived at. Unfortunately, such exercise cannot be done by this Court in an appeal filed under Section 260A of the Act. Be that as it may, the reliance placed on the order passed by the adjudicating authority of the Securities and Exchange Board of India (SEBI) is thoroughly misplaced since the said order does not examine the specific transaction done by the assessee with respect to the shares of Sulabh Engineers & Services Ltd. Therefore, placing reliance on the said order passed by the SEBI dated 4th October, 2023 can, in no manner, improve the case of the assessee. Be it noted that this Court exercising jurisdiction under Section 260A of the Act is required to consider as to whether any substantial question of law has arisen for consideration and this Court cannot be converted into an appellate Tribunal to examine the factual issue which was never placed by the assessee before the Assessing Officer or before the CIT(A) or before the Tribunal.

Thus, we find no grounds to interfere with the order passed by the Tribunal and as we find no substantial question of law arises for consideration, the appeal is dismissed.

The stay application IA No: GA/1/2024 is also dismissed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/mg.