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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/143/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX5, KOLKATA
VS
M/S. FOUNTAIN VANIJYA PVT.LIMITED(NOW MERGED WITH M/S.ASHIANA GOODS PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 16th August, 2024.

Appearance :
Mr. Prithu Dudhoria, Adv.
...for appellant

The Court :- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 12, 2023 passed by the Income Tax Appellate Tribunal "A" Bench , Kolkata in I.T.A. No. 400/Kol/2023 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 Hon'ble Income Tax Appellate Tribunal is justified in law in quashing the reopening proceedings on the ground that the assessee had suo moto added back long term capital gain/loss incurred during the year without considering the fact that long term capital gain of Rs.88, 73, 135/- on the sale of Penny Stock of Aagam Capital Limited cannot be treated as genuine and that the Assessing Officer has correctly reopened and added the entire sale proceeds of Rs.88,73,135/- from sale of penny stock of Aagam Capital Limited holding the same as bogus ?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law and on facts by deleting the additions made by the Assessing Officer even though the decision of the Hon'ble Jurisdictional High Court in the lead case of Pr. CIT –vs-Smt. Swati Bajaj squarely covers the issue of bogus Long Term Capital Gain from sale of penny stocks and also covered by exceptions laid in respect of Circular No. 23 of 2019 issued by the CBDT vide F. No. 279/Misc/M-93/2018-ITJ(Pt.) dated 06.09.2019?

We have heard Mr. Dudhoria, learned standing Counsel for the appellant.

The respondent has been served and affidavit of service has been filed but none appears for the respondent.

Though the department contends that the matter relates to penny stock, the issue which was decided by the Tribunal was whether the reopening of the assessment was valid. The assessee's contention was that the reasons for reopening of the assessment was that the income of Rs.88,73,135/- had escaped assessment which is generated by the assessee from sale of penny stocks, which reasons was found to be factually incorrect since the assessee had not shown any income from long term capital gain/short term capital gain/business loss and, therefore, the Tribunal came to the conclusion that the reason to believe is bad and consequently the reopening is illegal. The learned Tribunal took note of the decision of this Court in CIT-vs.-Infinity Infotech Parks Limited in ITAT No. 60 of 2024.

Thus, we find that on facts the Tribunal was convinced the reason for reopening was bad in law. Apart from that the Tribunal has noted that the alleged transaction has already been brought into books of accounts and has been disclosed in Income

Tax Return filed under Section 139(1) of the Act and, therefore, the very foundation of reopening of proceedings becomes bad in law. Reference was also made in the decision CIT-vs.-Jet Airways India Limited Ltd. (331 ITR 236) and Ranbaxy Laboratories Limited-vs.-CIT (336 ITR 136).

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

Thus, the appeal fails and dismissed.

Consequently, the application also stands dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.