OD-21

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

ITAT/241/2023
IA NO: GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
-VS-
RAJESH KUMAR DAMANI

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
HON'BLE JUSTICE SUPRATIM BHATTACHARYA

DATE: 5TH FEBRUARY 2024.

Mr. P. Dudhoria, Adv., for appellant.

The Court: This appeal, filed by the revenue under section 260A of the Income Tax Act, 1961, is directed against the order dated May 4, 2023, passed by the Income Tax Appellate Tribunal, SMC Bench, Kolkata in ITA No.2187/Kol/2019 relating to the assessment year 2011-12.

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

a. Whether the Hon'ble ITAT had erred in law and on facts in quashing the assessment u/s 147/143(3) of the Income Tax Act, 1961 by holding the same as invalid as reopening of the said assessment itself was not in accordance with law even though the Assessing Officer had reason to believe that income of the assessee had escaped assessment for the A.Y. 2011-12 which is a prerequisite for reopening asessment u/s 147 and also communicated the same to the assessee?

b. Whether the Hon'ble ITAT had erred in law and on facts by deleting the consequential additions made by the Assessing Officer whereas the decision of the Hon'ble Jurisdictional High Court in the lead case of Pr. CIT –vs- Smt. Swati Bajaj squarely covers this part i.e. Long Term Capital Gain on penny stock?

c. Whether the Hon'ble ITAT has erred in law without going into any specific details of the facts of the cases and without considering the report of Bombay Stock Exchange & SEBI which amounts to severe perversity?

d. Whether the Hon'ble ITAT has erred in law by not appreciating that the assessee could not substantiate the genuineness of the transaction to prove that it had not indulged in dubious share transactions meant to account for undisclosed income in the garb of Long Term Capital Gain(LTCG) to claim exemption under section 10(38) of the Act?

e. Whether the order of the Hon'ble ITAT is perverse in overlooking that it is the duty of the Tribunal to scratch the surface and probe documentary evidences in depth in light of conduct of assessee and other surrounding circumstances in order to see whether the assessee is liable to provisions of section 68 of the Income Tax Act or not?

f. Whether the Hon'ble ITAT has erred in law by deleting the addition made under section 68 of the Income Tax Act, 1961 on account of disallowance of the claim of Long Term Capital Gain (LTCG) treating the same as fraudulent, overlooking the fact that the entire transactions were stage managed with the objective to facilitate the assessee to plough back its unaccounted income in the form of sale proceeds relating to fictitious Long Term Capital Gain and claims of bogus exemption thereby giving rise to the vice in the decision making process?

g. Whether the Hon'ble ITAT has erred in law when it failed to give credence to investigations made by the Assessing Officer, investigation wing of the Income Tax Department as well as SEBI made into the astronomical rise in price of shares of companies which have no net worth and no financial foundation and thereby failed to apply the test of human probability to ascertain the true nature of transactions resulting the bogus Long Term Capital Gain (LTCG)?

We have heard Mr. Dudhoria, learned Senior Standing Counsel appearing for the appellant-revenue. None appears for the respondent-assessee.

The issues raised in this appeal by the revenue are squarely covered in favour of the revenue by a decision of this Court in the case of Principal Commissioner of IncomeTax –vs- Smt. Swati Bajaj), reported in 2022 SCC OnLine 1572.

Thus, following the above decision, the appeal filed by the revenue is allowed and the substantial questions of law are answered in favour of the revenue-appellant and against the respondent.

The stay application stands closed.

(T.S. SIVAGNANAM, CJ.)

(SUPRATIM BHATTACHARYA, J.)

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