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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 259/2024

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 .....Appellant

Through: Mr. Sanjay Kumar, SC with Ms. Easha, Adv.

versus

SMT. SUMATI GARG .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **02.08.2024**

<u>CM APPL. 27169/2024 (370 Days Delay in Re-filing</u>)

Bearing in mind the disclosures made, the delay of 370 days in re-filing the appeal is condoned.

The application shall stand disposed of.

<u>ITA 259/2024</u>

1. From the affidavit of service which has been tendered in these proceedings we find that although the assessee stands duly served, none has appeared on her behalf. We consequently, find no justification to defer disposal of the instant appeal.

2. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [**"Tribunal"**] dated 23 September 2022 passed on a Miscellaneous Application which had sought revival of an appeal which had been preferred by the appellant.

3. It become pertinent to note that the said appeal was originally disposed of on 23 August 2019, subject to the following liberty being

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reserved: -

> "**5.** <u>Before parting, we clarify that if on a later date, the Revenue finds that the tax effect in dispute in any of the captioned appeals is more than the limit prescribed in the Circular dated 08.08.2019 (supra), or it is protected by any of the exceptions provided in para 10 of the CBDT circular dated 11.07.2018 (supra), it shall be at liberty to approach the Tribunal for recall of the order and reinstitution of the appeal for adjudication on merits. The Tribunal shall consider such applications, if any, as per the extant law</u>.
>
> **6.** In conclusion, by applying the circular dated 08.08.2019 (supra) read with circular dated 11.07.2018 (supra) and 20.08.2019 (supra), the captioned appeals of the Revenue are dismissed as withdrawn/ not pressed."

4. In the meanwhile and in the course of disposal of the appeal, the Central Board of Direct Taxes [**"CBDT"**] came out with a Circular dated 06 September 2019 which reads as follows:-

> "Reference is invited to the Circulars issued from time-to-time by Central Board of Direct Taxes (the Board) under section 268A of the Income-tax Act, 1961 (the Act), for laying down monetary limits and other conditions for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court.
>
> 2. Several references have been received by the Board that in large number of cases where organised tax evasion scam is noticed through bogus Long-Term Capital Gain (LTCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial fora on account of enhanced monetary limits. It has been reported that in large number of cases. ITATs and High Court have recognized the unique *modus operandi* involved in such scam and have passed judgments in favour of the revenue. However, in cases where some appellate fora have not given due consideration to position of law or facts investigated by the department, there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.
>
> 3. In this context, Board has decided that notwithstanding anything contained in any circular issued u/s. 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organized tax evasion

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activity."

5. As is manifest from the above, the said Circular introduced an exception in case of 'penny stocks'. Undisputedly, it was the aforesaid exception which would have sustained the appeal which had been preferred by the Principal Commissioner. However, the Miscellaneous Application ultimately came to be disposed with the Tribunal taking the position that since the Circular of 06 September 2019 was not even in existence on the date when the appeal had come to be originally disposed of, namely on 23 August 2019, its order cannot be said to suffer from any apparent error.

6. We note that in terms of paragraph 5 of the order dated 23 August 2019, specific liberty had been accorded to the appellant to approach the Tribunal again and to seek recall of its order if it be protected by any of the exceptions that were provided or contemplated in the circulars which then prevailed.

7. In view of the specific exception which now stands made out in the CBDT Circular dated 06 September 2019, we are of the considered opinion that in the interest of justice the appeal would be liable to be heard and maintained on merits.

8. We accordingly, allow the instant appeal and set aside the order of the Tribunal dated 23 September 2022. The appeal shall consequently stand revived on the board of the concerned Tribunal to be decided afresh in accordance with law.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 2, 2024/sk

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