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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/15/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 13 KOLKATA
VS
JYOTI RAKESH ROONGTA

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 21st July, 2025

Appearance :
Mr. Prithu Dudheria, Adv.
..for the appellant.

Mr. Ramesh Kumar Patodia, Adv.
Ms. Megha Agarwal, Adv.
…for the respondent.

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 April 8, 2024 passed by the Income Tax Appellate Tribunal, A- Bench, Kolkata (the Tribunal) in ITA/143/Kol/2024 for the assessment year 2012-13.

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

i) *Whether the order of the Learned Income Tax Appellate Tribunal was justified in law in deleting the addition of Rs.38,97,080/- without considering the larger scam of tax evasion by way of bogus capital gain generated in penny stock ?*

ii) *Whether the Learned Income Tax Appellate Tribunal has erred in law in failing to give credence to he investigations made by the Assessing Officer Investigation Wing of the Income Tax Department as well as SEBI on astronomical rise in prices 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 in bogus LTCG in view of the fact that the departmental appeal is allowed by Hon'ble High Court Calcutta of Bogus LTCG (Penny Stocks) case in IA No.GA/2/2022 (old No.GA/1044/2020) in ITAT/31/2020 of PCIT – 5 Vs. Swati Bajaj on 14.06.2022?*

We have heard Mr. Prithu Dudheria, learned senior standing counsel for the appellant/revenue and Mr. Ramesh Kumar Patodia, learned advocate for the respondent/assessee.

The short question which falls for consideration is whether the reopening of the assessment was validly done. In the reasons for reopening the Assessing Officer alleged that the assessee earned a Long Term Capital Gain (LTCG) of Rs.38,97,080/- on the sale of penny stock of DLS Exports Private Limited. The assessee in their objection for reopening stated that during the assessment year under consideration, no shares have been sold by the assessee. Copy of the bank statement was also attached to the said letter dated 21.12.2019. The assessee, therefore, prayed for dropping the reassessment. The objections were disposed of by the Assessing Officer on a totally different ground stating that reopening was on account of capital gain on sale of immovable property under Section 50C of the Act. This will clearly show that the Assessing Officer did not apply his mind and did not take an independent decision in the matter. Therefore, the reopening proceedings have to be set aside and rightly set aside by the learned Tribunal. That apart, the assessee took a specific stand in writing in response to the show cause notice dated 20.12.2019 by submitting a reply on 21.12.2019 stating that no shares have been sold by the assessee during the period under review and submitted the bank statement account in connection with the same to prove the authenticity of its submission. This specific ground raised was brushed aside by the Assessing Officer and the assessment was reopened and additions were made. The same grounds were canvassed before the Appellate Authority, namely, NFAC. At the first blush, it appears that the Appellate Authority's order is an a well-reasoned and detailed order but on a closer scrutiny we find that what the Appellate Authority has done is to extract the entire ground of appeal and the submissions made by the assessee which covers almost 36 pages of the 38 page order and the decision is only in paragraph 5 wherein the Appellate Authority has not dealt with the factual issue at all except for referring to the decision of the Hon'ble Court in the case of PCIT Vs. Swati Bajaj dated 14.6.2022. Thus, the order passed by the Appellate Authority is also an outcome of total non application of mind and requires to be set aside which was rightly done by the learned Tribunal.

Thus, the conclusion of the learned Tribunal that the Assessing Officer has reopened the assessment on an erroneous formation of belief and he made addition without any specific details processed by them is fully justified. Thus, we find no grounds to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal fails and is dismissed.

The stay application, IA NO: GA/2/2025, also stands dismissed.

(T.S SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/
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