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

ITAT/51/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
RAGHVENDRA MOHTA

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 5th May, 2025.

Mr. Prithu Dudhoria, Adv. …for appellant.

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. Sourendra Nath Banerjee, Adv. … for respondent.

The Court : There is a delay of 117 days in filing the appeal. As the delay has been properly explained the same is condoned. The application is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 8.4.2024 passed by the Income Tax Appellate tribunal "B" Bench, Kolkata (the Tribunal) in ITA/2416/Kol/2017 for the assessment year 2014-15.

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

"a. WHEATHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was justified in law in quashing the assessment order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 on 29.12.2016 based on an incorrect understanding of the provisions of Section 120 of the Income Tax Act, 1961 read with CBDTs Instruction No. 1/2011 issued vide F. No.187/12/2010-IT(A-1) dated 31.01.2011 which does not fix any rigid jurisdiction but is made for equitable distribution of work and thereby failing to appreciate that the Notice under Section 143(2) was correctly issued by the ACIT, Circle-36, Kolkata who was the Assessing Officer having PAN jurisdiction over the assessee and that the subsequent assessment completed by the Assessing Officer was a valid assessment?

b. WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was justified in law in quashing the assessment order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 on 29.12.2016 purely on technical grounds and deleting the additions of Rs. 42,27,500/- made u/s. 68 and Rs.1,48,657/- made U/s. 69C of the Income Tax Act by disallowing the assessee's claim of exemption of bogus LTCG without going into the merits of the case and examining the assessee's attempt to evade taxes in an organized way by obtaining accommodation entries from entry operators in the garb of Penny Stocks of "Ashika Credit Capital Ltd.?"

We have heard Mr. Prithu Dudhoria, learned advocate for the appellant and Mr. Abhratosh Mazumder, learned senior counsel assisted by Mr. Avra Mazumder, learned advocate for the respondent.

The assessee preferred appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals)-10, Kolkata [CIT(A)] dated 26.9.2017. One of the grounds urged before the learned Tribunal was that the Assessing Officer, who passed the assessment order did not have jurisdiction over the case of the assessee and, therefore, the notice as well as the assessment order are bad in law. The learned Tribunal took note of the facts and circumstances of the case and found that the assessee filed its return of income declaring the income to be nil. Subsequently, notice under section 143(2) was issued on 10.9.2015 and notice under section 142(1) dated 13.6.2016 was issued along with the questionnaire. The assessee contended that the notices were without jurisdiction and relied upon section 120 of the Act. In this regard, the assessee referred to the notification issued by the CBDT in Instruction No.1 of 2011. The learned Tribunal took into consideration the facts of the case and found that the assessment has been framed by the Assessing Officer, who inherently lacks jurisdiction to do so.

The learned Tribunal took note of the decision of a Co-ordinate Bench of the learned Tribunal in the case of *Bhagyalaxmi Conclave (P) Ltd. vs. DCIT* dated 3.2.2021. Apart from other decisions and allowed the assessee's appeal, the revenue had challenged the order passed in the case of *Bhagyalaxmi Conclave (P) Ltd.* before this court in ITAT/221/2022 etc. and by a judgment reported in 2022 (12) TMI 1514, the appeal filed by the department was dismissed wherein one of the questions framed is identical to the substantial questions of law suggested by the revenue in the instant case. Thus, we find that the learned Tribunal was right in allowing the assessee' appeal and setting aside the order passed by the Assessing Officer on the ground of lack of inherent jurisdiction.

For the above reason, the appeal is dismissed and the substantial questions of law are answered against the revenue.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

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