

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

CORAM:
THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT/271/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
SHRI SAWANKUMAR T JAJOO

Appearance:

Mr. Soumen Bhattacharjee, Adv.
Ms. Shradhya Ghosh, Adv.

...for the appellant.

Ms. Aratrika Roy, Adv.
Mr. Prakash Mishra, Adv.
Mr. Subhajit Das, Adv.

...for the respondent.

HEARD ON : 17.01.2025
DELIVERED ON: 17.01.2025

(T.S. SIVAGNANAM, C.J.) :

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 13.03.2023 passed by the Income Tax Appellate Tribunal, "E" Bench, Mumbai (the Tribunal) in ITA/6489/MUM/2018 for the assessment year 2013-14.
2. 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 ITAT has erred in law by not appreciating the fact that Long Term Capital Gain of Rs.4,33,71,468/- claimed as exempted u/s. 10(38) of the IT Act, 1961 by the assessee from sale of scrips of Wagend Infra Venture Pvt. Limited was correctly disallowed and added u/s.68 by the Assessing Officer on the ground that the said scrips has all characteristics of a penny stock used for generating bogus Long Term Capital Gains?
- ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was erred in law in failing to give credence to investigations made by the Assessing Officer, Investigation Wing of the Income Tax Department on the astronomical rise in price of shares of Wagend Infra Venture Pvt. Limited which had no net worth and no financial foundation and thereby failed to apply the test of human probability to ascertain the true nature of transactions and overlooked the fact that the entire transactions were stage managed in consonance with brokers and entry operators with the objective to facilitate the beneficiaries to plough back their unaccounted income in the form of bogus Long Term Capital Gains thereby giving rise to the vice of perversity in the decision making process?
- iii) Whether the Hon'ble ITAT had erred in law and on facts by deleting the addition made by the Assessing Officer u/s. 68 of the IT Act, 1961 in the order u/s. 143(3) read with section 153A 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 Para 3.1(h) of CBDT'S Circular No. 5 of 2024 dated March 15, 2024?

- 3.** We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel for the appellant and Ms. Aratrika Roy, learned senior Advocate appearing for respondent/assessee. There is a delay of 432 days in filing the appeal. Though the explanation which is submitted by the revenue is not fully satisfactory, yet this is an appeal under Section 260A of the Act, wherein the Court is required to consider whether any substantial question of law arises for consideration we are persuaded to exercise discretion and condone the delay in filing of the appeal.
- 4.** The assessee preferred an appeal challenging the orders under Section 143(3) read with Section 153A of the Act dated 30.12.2017. The Appellate Authority namely the Commissioner of Income Tax (Appeals) 49, Mumbai allowed the appeal.
- 5.** Aggrieved by the same, revenue preferred an appeal before the learned Tribunal which has been dismissed. This order has been put to challenge by the revenue in this appeal.
- 6.** Before the CIT(A) the assessee challenged the addition made by the assessing officer as being perverse and contrary to the facts and circumstances of the case and without following proper procedure and that the addition under Section 68 of the Act was made on surmises, presumption and conjecture without any incriminating evidence being found during the course of search without bringing on record any material evidence in support of the addition. Further it was contended that assessing officer erred in law in relying upon third party statement against the assessee without providing any opportunity of being heard in this regard despite the fact that the name of the assessee does not appear in the statement given by the third party.

- 7.** On the first aspect as to the procedural irregularities pleaded by the assessee, the CIT(A) found that adequate opportunity was granted to the assessee to make a submission and the assessment was completed after considering the submission of the assessee and, therefore, there was no violation of any procedural law while completing the assessment. Thus, this ground was triggered against the assessee. The CIT(A) thereafter took up for consideration the merits of the matter and by a very detailed order after analyzing all the contention the appeal was allowed. The learned Tribunal has elaborately considered factual position and found that the assessee had submitted in detail in respect of allotment of shares with supporting share application form with bank statement and demat statement and broker ledger account and discharged the onus cast upon the assessee and all those materials were placed in the form of a paper book before the Tribunal.
- 8.** After going through the document the Tribunal held that the assessing officer made the addition solely on the ground that the scrips are in the stock whereas the assessee was able to demonstrate that the shares of the company in which the assessee has invested does not appear in the AIR report of the revenue which related to trading in penny stock. Further the name of the alleged company did not appear in the list of 331 suspended companies and no adverse inference was drawn by the SEBI.
- 9.** Thus, the Tribunal found that the assessing officer committed a mistake which is apparent on the face of the assessment order. The Tribunal also noted that the assessee had submitted details to substantiate the claim and the transaction of the assessee was found to be not in the nature of speculation and the assessee has purchased scrips for long term holding. The Tribunal faulted the assessing officer in not considering the voluminous information placed by the assessee

during the course of assessment proceedings. The learned Tribunal also referred to the notice issued by the Bombay Stock Exchange dated 17.07.2016 wherein the trading in the company in question namely Wagend Infra Venture Limited resumed with effect from 15.7.2016 and this information made known in the notice issued by the Bombay Stock Exchange was not disputed by the revenue. Further, the learned Tribunal on facts found that in case of the assessee's father the long term capital gains on the sale of some scrips/shares was accepted by the department, and this was specifically noted by the CIT(A).

- 10.** Thus, we find that the CIT(A) has elaborately considered the factual position and the voluminous documents and information furnished by the assessee and the same were re-appreciated by the Tribunal and the order passed by the CIT(A) was affirmed.
- 11.** Thus, we find no question of law much less substantial question of law arising for consideration in this appeal.
- 12.** Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, C.J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)