OD-13

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

ITAT/150/2022
IA No.GA/1/2022; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, -5, KOLKATA
Vs
M/S. S.N. SODHANI HUF

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st October 2022.

Appearance :
Mr. Tilak Mita, Adv.
..for appellant

GA/1/2022

The Court:- Heard Mr. Tilak Mitra, learned Advocate for the appellant / revenue. Though notice was sent to the respondent/assessee the same was returned unclaimed. There is a delay of 964 days in filing the appeal.

Since the legal issue involved in this appeal is covered by a earlier decision of this Court in favour of the revenue we exercise discretion and condone the delay in filing the appeal.

ITAT/150/2022

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961, is directed against the order dated 14th November, 2018 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolakata in I.T.A. No. 1566/Mkol/2018 for the assessment year 2014-2015. The revenue has raised the following substantial question of law for consideration:-

(ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal erred in ignoring the direct and circumstantial evidence brought on record by the Assessing Officer in the form of modus operandi contrived by the accommodation entry providers who manipulated the share price of SRK Industries Ltd. and provided facility for round tripping of assessee's unaccounted money to record fictitious Long Term Capital Gains of Rs.19,48,385/- in favour of the instant assessee which is also claimed as exempted income tax u/s 10(38) of the Income Tax Act, giving rise thereby to the vice of perversity in the process of decision making ?

(ii) Whether on the facts and the circumstances of the case the Learned Income Tax Appellate Tribunal erred in cancelling the disallowance of Long Term Capital Gain of Rs.19,48,385/- overlooking the fact that the share transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains of Rs.19,48385/- and claim bogus exemption thereupon, thereby giving rise to the vice of law in the decision making processes?

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant. Though notice was sent to the respondent the notice was returned unclaimed and the respondent has not taken any steps for entering appearance. Therefore, we have heard learned standing Counsel for the appellant and proceeded to decide the appeal.

We find from the order passed by the learned Tribunal that no independent reasoning has been given by the learned Tribunal but the Tribunal chose to follow the decision of the Coordinate Bench in I.T.A. No.

354/Kol/2018 dated 24th August, 2018. In fact, in the said decision the earlier decision was affirmed. Those decisions were appealed against in the case of *Principal Commissioner of Income Tax Vs. Swati Bajaj, SCC online Cal 1572* the appeal filed by the revenue were allowed and the substantial questions of law were answered in favour of the revenue. The said decision will squarely apply to the case on hand. Thus applying the case of *Swati Bajaj*, the appeal filed by the revenue is allowed and the substantial questions of law of law are answered in favour of the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.