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

ITAT/243/2024
IA NO: GA/1/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
M/S B L TAK AND SONS HUF

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 9th June, 2025.

Mr. Prithu Dudheria, Adv. ...for appellant.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 14.3.2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITA/2622/Kol/2018 for the assessment year 2014-15.

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

> "a. Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal has committed substantial error in law by not appreciating the fact that Short Term Capital Loss of Rs.54,13,374/- claimed and set-off by the assessee from sale of scrips of M/s. Tuni Textile Mills Ltd., M/s. Nikki Global Ltd., M/s. Unno Industries Ltd. etc. was correctly disallowed by the assessing officer on the ground that the said scrips had been identified as penny stocks used for generating bogus Short Term Capital Losses?
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> b. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in law in failing to give credence to investigations made by the Investigation Wing of the Income Tax Department and the findings of the assessing officer duly recorded in the assessment order on the astronomical rise in price of shares of M/s. Tuni Textile Mills Ltd., M/s. Nikki Global Ltd., M/s.

Unno Industries Ltd. etc. which had no net worth and no financial foundation and the immediate sharp fall is share prices without any jurisdiction?

c. Whether the learned Income Tax Appellate Tribunal has committed substantial error in law in deleting the disallowance of Short Term Capital Loss made by the assessing officer in the order u/s. 143(3) even though the ratio of 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 Short Term Capital Loss/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?

We have heard Mr. Prithu Dudheria, learned senior standing counsel for the appellant/department. Despite service of notice on the respondent/assessee through post as well as through e-mail, none appears for the respondent/assessee.

The assessing officer by an order dated 28.12.2016 completed the assessment by the assessee for the year under consideration under section 143(3) of the Act. After taking note of the facts and circumstances the assessing officer held that the entire transaction done by the assessee was a pre-mediated scheme on the part of the assessee to avoid taxes in the grab of bogus long term capital loss. Further, the assessing officer on facts found that the market sources revealed that accommodation entries are normally given at brokerage charge of @ 0.2% to 0.5% of the amount involved. Accordingly, the assessing officer held that the observations of expenditure remained unexplained and added back the same to the total income of the assessee under section 69C of the Act. The assessee carried the order on appeal before the Commissioner of Income Tax (Appeals)-10, Kolkata, [CIT(A)]. The CIT(A) re-appreciated the factual position and by an order dated 14.9.2018 affirmed the order passed by the assessing officer. The assessee carried the order on appeal to the learned Tribunal and the learned Tribunal by the impugned order has allowed the assessee's appeal. The discussion and finding of the learned Tribunal is contained only one paragraph,

namely paragraph 8 and the only observation made by the learned Tribunal is that the addition cannot be sustained on the ground that it was based on the basis of the surmise and conjecture. We are unable to persuade ourself to agree with the conclusion arrived at by the learned Tribunal since the learned Tribunal did not examine the factual aspect which was considered in detail by the assessing officer as well as CIT(A). This Court had an occasion to consider another case which also related to manipulation of the share price of penny stocks of M/s. Tuni Textile Mills Ltd. in the case of Principal Commissioner of Income Tax-9, Kolkata vs. P.L. Goenka HUF, ITAT/241/2024 and the appeal filed by the revenue was allowed by judgment dated 6.5.2025. The facts in the instant case are identical to that of the facts in the case of P.L. Goenka HUF and the penny stocks in question also is in respect of the very same company, namely, M/s. Tuni Textile Mills Ltd.

At this juncture, we refer to the relevant paragraphs of the judgment in the case of P.L. Goenka HUF which are as follows:

> "*11. We have carefully perused the assessment order dated 25.09.2021. In paragraph 2, the assessing officer sets out the information received from the investigation wing vide letter dated 6.3.2020. It is not in dispute that the assessee's name also figures in the information furnished by the investigation wing. After setting out those details the assessing officer has taken note of the return filed by the assessee dated 21.10.2020 and thereafter issued notice under Section 143(2) of the Act. In paragraph 3, the assessing officer has discussed the entire facts relating to the transactions done by the assessee in respect of purchase of shares of M/s. Tuni Textiles Mills Ltd. and noted that the value of the shares of the assessee is almost 4.5 times in a span of one year and 2 months resulting in huge capital gains to the assessee. Thereafter, the assessing officer has verified the contract note and the share certificate submitted by the assessee and other details of the transactions done by the assessee as well as the details furnished in the return of income and then has stated that the facts and circumstances surrounding the transaction of shares of M/s. Tuni Textiles Mills Ltd. and subsequent earning of exempt LTCG by the assessee through the transaction in the said shares clearly indicate that the*

claim of the assessee regarding earning of significant LTCG exempt under Section 10(38) requires deeper investigation and analysis to uncover the real nature of the alleged regular/prudent transaction. Thereafter, the assessing officer has taken note of the background of the investigation done by the department, discussed about the background of the company namely M/s. Tuni Textiles Mills Ltd. and taken note of the profit and loss account of the said company and its balance sheet, asset dt. March 31, 2012, statement of cash flow for the year ended 31.03.2012 and come to the conclusion that the fundamentals of the company are very weak and it clearly indicates that abnormal price rise in the shares of the company is not natural or normal but artificially manipulated. Further, noting the financial strength of the said company the assessing officer has noted that the price of the shares rose astronomically during the period May 2010 to March, 2011 from Rs.16/- to Rs. 271/-. With all these details, show cause notice was issued to the assessee on 03.09.2021 for which the assessee submitted their reply on 10.09.2021 and the assessing officer took into consideration the stand taken by the assessee in their reply and has recorded reasons to hold that the assessee has failed to discharge the onus and, therefore, the only escapable conclusion is that numerous individual assessees have taken entry to LTCG by paying its unaccounted money. Furthermore, that the transaction in shares of M/s. Tuni Textiles Mills Ltd. by the assessee was a pre-arranged transaction in the form of accommodation entry managed through collusive transactions by group of entry operators and shell entities. Thereafter the assessing officer has taken note of the various decisions, namely, ***CIT Vs. Durga Prasad More*** *reported in* ***(1971) 82 ITR 540(SC), Sumati Dayal Vs. Commissioner of Income Tax*** *reported in* ***(1995) 214 ITR 801 (SC),*** *applied the test of human probabilities as propounded in the said decisions and then completed the assessment and has pointed out that before finalizing the assessment a final show cause notice was issued on 18.09.2021 for which the assessee submitted reply on 22.09.2021 and the said reply was also considered and the assessing officer has pointed out that the assessee has not submitted any new evidence in response to the show cause notice. Therefore, the learned Tribunal committed an error in coming to a conclusion that the assessing officer has not applied his mind for reopening the assessment under Section 147 of the Act.*

12. That apart, the learned Tribunal has not examined the reasons set out by the appellate authority which has re-examined the factual position, taken note of the grounds raised by the assessee and their oral submissions and has in detail discussed about the lowering of funds and how the funds reached the concerned beneficiaries and has factually found that the assessee is one of the beneficiaries who received accommodation entry which was used to avail bogus LTCG/STCL. The various decisions of the Hon'ble Supreme Court were taken into consideration and the appeal was dismissed. Therefore, we find that the learned Tribunal committed a serious factual error in coming to the conclusion that there was no application of mind of the assessing officer and erroneously elevated the status of CBDT which is meant as a guiding note of the assessing officer to have an effect of regulation. Therefore, the order impugned in this appeal deserves to be quashed.

13. Accordingly, the appeal filed by the revenue is allowed and the substantial questions of law raised by the revenue are answered in favour of the revenue."

As noted above, since in the present appeal the shares of the very same company, namely, M/s. Tuni Textile Mills Ltd. is concerned, the findings recorded in the decision in P.L. Goenka HUF will squarely apply to the facts and circumstances of the case.

For the above reason, the revenue succeeds in this appeal. Accordingly, the appeal is allowed and the order passed by the learned Tribunal is set aside and the order passed by the assessing officer as affirmed by the CIT(A) are restored. Consequently, the substantial questions of law are answered in favour of the appellant/revenue.

GA/1/2024 stands disposed of accordingly.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

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