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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision : 25.04.2023

+ **ITA 242/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms EashaKadian and Ms
Hemlata Rawat, Advs.

versus

M/S FINANCIAL WORLD (INDIA) PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

CM Appl.20277/2023

1. This is an application moved on behalf of the appellant/revenue seeing condonation of delay in filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 1 day.

2. For the reasons given in the application, the delay is condoned.

3. The application is disposed of in the aforesaid terms.

CM Appl.20278/2023

4. This is an application moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

4.1 According to the appellant/revenue, there is a delay of 25 days.

5. For the reasons given in the application, the delay is condoned.

6. The application is disposed of in the aforesaid terms.

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7. This appeal concerns Assessment Year (AY) 2015-16.



8. The appeal seeks to assail the order dated 23.08.2019 passed by the Income Tax Appellate Tribunal [in short, “ITAT”]. The impugned order was passed in a miscellaneous application i.e., MA No. 30/Del/20202 filed on behalf of the appellant/revenue.

9. The record shows, that the appellant/revenue had sought recall of the order dated 23.08.2019 passed by the Tribunal in its appeal i.e., ITA No.6268/Del/2018. The aforementioned order i.e., 23.08.2019 was passed by the Tribunal, having regard to the fact that the tax effect was less than the prescribed threshold monetary limit i.e., Rs.50 lakhs.

10. In this context, the Tribunal had taken note of circular no. 17/2019 dated 08.08.2019 issued by the Central Board of Direct Taxes [in short, “CBDT”].

11. Evidently, the CBDT issued another circular i.e., circular no. 23/2019 dated 06.09.2019, whereby an exception was made concerning appeals which pertains to bogus long term capital gains obtained from transacting in penny stocks. It is in this context, that the miscellaneous application came to be filed by the appellant/revenue which, as noticed above, was dismissed by the Tribunal *via* the order dated 23.09.2019.

12. The Tribunal, in arriving at the conclusion, that the second circular could not be taken into account, in view of the fact, that at the time when the appeal of the appellant/revenue was dismissed, what was in force was the first circular i.e., circular no. 17/2019 dated 08.08.2019, relied upon the following judgments of the Gujarat High Court:

- i. ***PCIT v. Denisha Rajendra Keshwani*** (2022) 134 Taxmann.com 249 (Gujarat); and
- ii. ***PCIT v. Anand Natwarlal Sharda*** (2021) 128 Taxmann.com 376



(Gujarat).

13. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that the impugned order is unsustainable, for the reason that it is the prerogative of the litigant, whether or not to press the appeal.

13.1 Furthermore, Mr Kumar submits, that since the policy of the CBDT had changed and an exception was carved out with regard to matters which concern transacting in shares of penny stock companies, the Tribunal ought to have decided the appellant/revenue's appeal on merits.

14. We are not impressed with the submissions made by Mr Kumar. The reason being, that the circulars issued by CBDT which are prevalent at the relevant point in time, are binding on the appellant/revenue.

15. The scope of the present appeal before us is to ascertain, as to whether any substantial question of law has arisen or not. Since the Tribunal went by the first circular, which was decidedly in force on the given date, and did not contain the exception which was carved out in the second circular, we are not inclined to disturb the impugned order.

16. Therefore, clearly, there was no error apparent on the face of the record, which would have, if at all, given jurisdiction to the Tribunal to recall its earlier order.

17. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 25, 2023/r

Click here to check corrigendum, if any