$~**S-44**

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

\+ **ITA 477/2022**

PR. COMMISSIONER OF INCOME TAX -12 ..... Appellant

Through: Mr.Zoheb Hossain, Sr.Standing Counsel with Mr.Vipul Agrawal and Mr.Parth Semwal, Jr.Standing Counsel.

versus

KARUNA GARG ..... Respondent

Through: None.

% Date of Decision: 23rd November, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

CM Appl. 50158/2022

Keeping in view the averments in the application, delay in re-filing the appeal is condoned.

Accordingly, the application stands disposed of.

ITA 477/2022

1. Present Income Tax Appeal has been filed challenging the Order dated 6th August, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2772/Del/2019 for the Assessment Year 2015-16.

2. Learned counsel for the appellant states that the ITAT has erred in deleting the additions of Rs.1,60,18,923/- as unexplained credit under

Section 68 read with Section 115BBE of the Income Tax Act, 1961 ('the Act') on account of bogus Long-Term Capital Gain on sale of penny stock company namely M/s Goldline International Finvest Ltd. on the ground that the assessing officer has not made independent enquiry.

3. Though Revenue has mentioned in the present appeal that the issue involved is covered by the judgment of this Court in ***Suman Poddar v. ITO 423 ITR 480***, wherein appeal of the Assessee was dismissed taking judicial notice of the fact that there was an astronomical increase in the share price of a company which was not commensurate with the financial parameters of the said company, yet this Court finds that a Coordinate Bench of this Court in ***PCIT vs. Smt. Krishna Devi [ITA 125/2022] & connected ITAs*** has upheld the ITAT order which is impugned in the present appeal.

4. The relevant portion of the order in ***PCIT vs. Smt. Krishna Devi*** (supra) is reproduced hereinbelow:-

> "*11. On a perusal of the record, it is easily discernible that in the instant case, the AO had proceeded predominantly on the basis of the analysis of the financials of M/s Gold Line International Finvest Limited. His conclusion and findings against the Respondent are chiefly on the strength of the astounding 4849.2% jump in share prices of the aforesaid company within a span of two years, which is not supported by the financials. On an analysis of the data obtained from the websites, the AO observes that the quantum leap in the share price is not justified; the trade pattern of the aforesaid company did not move along with the sensex; and the financials of the company did not show any reason for the extraordinary performance of its stock. We have nothing adverse to comment on the above analysis, but are concerned with the axiomatic conclusion drawn by the AO that the Respondent had entered into an agreement to convert unaccounted money by claiming fictitious LTCG, which is exempt under Section 10(38), in a pre-planned manner to evade taxes. The AO extensively relied upon the search and survey operations conducted by the Investigation Wing of the Income Tax Department in Kolkata, Delhi, Mumbai and Ahmedabad on penny stocks, which sets out the modus operandi adopted in the business of providing entries of bogus LTCG. However, the reliance placed on the report, without further corroboration on the basis of cogent material, does not justify his conclusion that the*

transaction is bogus, sham and nothing other than a racket of accommodation entries. We do notice that the AO made an attempt to delve into the question of infusion of Respondent's unaccounted money, but he did not dig deeper. Notices issued under Sections 133(6)/131 of the Act were issued to M/s Gold Line International Finvest Limited, but nothing emerged from this effort. The payment for the shares in question was made by Sh. Salasar Trading Company. Notice was issued to this entity as well, but when the notices were returned unserved, the AO did not take the matter any further. He thereafter simply proceeded on the basis of the financials of the company to come to the conclusion that the transactions were accommodation entries, and thus, fictitious. The conclusion drawn by the AO, that there was an agreement to convert unaccounted money by taking fictitious LTCG in a pre-planned manner, is therefore entirely unsupported by any material on record. This finding is thus purely an assumption based on conjecture made by the AO. This flawed approach forms the reason for the learned ITAT to interfere with the findings of the lower tax authorities. The learned ITAT after considering the entire conspectus of case and the evidence brought on record, held that the Respondent had successfully discharged the initial onus cast upon it under the provisions of Section 68 of the Act. It is recorded that "There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels." The above noted factors, including the deficient enquiry conducted by the AO and the lack of any independent source or evidence to show that there was an agreement between the Respondent and any other party, prevailed upon the ITAT to take a different view. Before us, Mr. Hossain has not been able to point out any evidence whatsoever to allege that money changed hands between the Respondent and the broker or any other person, or further that some person provided the entry to convert unaccounted money for getting benefit of LTCG, as alleged. In the absence of any such material that could support the case put forth by the Appellant, the additions cannot be sustained.

12. Mr. Hossain's submissions relating to the startling spike in the share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent. With regard to the claim that observations made by the CIT(A) were in conflict with the Impugned Order, we may only note that the said observations are general in nature and later in the order, the CIT(A) itself notes that the broker did not respond to the notices. Be that as it may, the CIT(A) has only approved the order of the AO, following the same reasoning, and relying upon the report of

the Investigation Wing. Lastly, reliance placed by the Revenue on ***Suman Poddar v. ITO*** *(supra) and* ***Sumati Dayal v. CIT*** *(supra) is of no assistance. Upon examining the judgment of* ***Suman Poddar*** *(supra) at length, we find that the decision therein was arrived at in light of the peculiar facts and circumstances demonstrated before the ITAT and the Court, such as, inter alia, lack of evidence produced by the Assessee therein to show actual sale of shares in that case. On such basis, the ITAT had returned the finding of fact against the Assessee, holding that the genuineness of share transaction was not established by him. However, this is quite different from the factual matrix at hand. Similarly, the case of* ***Sumati Dayal v. CIT*** *(supra) too turns on its own specific facts. The above-stated cases, thus, are of no assistance to the case sought to be canvassed by the Revenue.*

13. The learned ITAT, being the last fact-finding authority, on the basis of the evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record. We thus find no perversity in the Impugned Order."

5. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 23, 2022
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