IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 332 of 2022

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 1
Versus
JAGAT PRAVINBHAI SARABHAI
==
Appearance:
MR MANISH BHATT, SR.ADVOCATE with MR.KARAN SANGHANI for M R BHATT & CO.(5953) for the Appellant(s) No. 1
for the Opponent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE N.V.ANJARIA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 04/07/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

The present Tax Appeal preferred under Section 260A of the Income Tax Act is directed against judgment and order dated 1.12.2021 of Income Tax Appellate Tribunal, Ahmedabad, 'B' Bench, Ahmedabad in ITA No.1505 of 2019.

2. As submitted by learned senior advocate Mr.M.R.Bhatt for M.R.Bhatt and Co., the appellant revenue proposes the following substantial questions of law, which according to the submission requires examination.

> *"Whether on the facts and circumstances of the case and in law, the decision of Appellate Tribunal is ex-facie perverse because the Appellate tribunal deleted the addition of Rs.2,10,474/- made on account of bogus long term capital gain, without appreciating the entire gamut of fact that the assessee transacted in penny stock namely M/s. Devika Proteins Ltd. thus earning bogus Long term Capital Gain and*

claiming it to be exempt under section 10(38) of the Income Tax Act?"

3. The assessee filed the return of income for the assessment year 2011-12 on 29.3.2012 declaring his total income Rs.3,11,490/-. Subsequently the assessment was reopened as information was received that assessee has indulged into script of shell company and had claimed long term capital gain on sale of shares of Devika Proteins Limited to the tune of Rs.2,10,474/- and that the amount was claimed as exemption under Section 10(38) of the Income Tax Act, 1961 (hereafter referred to as 'the Act')

3.1 The Assessing Officer made addition of the said amount. The entire transaction was treated as bogus and in the nature of penny stock. By adding Rs.2,10,474/- under Section 68 of the Act, total income was assessed at Rs.5,21,964/-.

3.2 In appeal by the assessee before the Commissioner of Income Tax (Appeals), the issue was re-examined. According to the appellate authority the appellant assessee had furnished evidence to show that the shares were brought as genuine investment which was long back in the year 2000-01. As the shares were in the nature of old investment, they could not be treated as penny stock by any stretch of imagination.

4. The Income Tax Appellate Tribunal further examined the question in appeal preferred by the revenue and confirmed the view of the appellate authority noticing that the shares were purchased in the year 2001 and they were sold after long time in the year 2010-11.

5. The genuineness of investment in the shares by the assessee was substantiated by him by producing copy of transaction statement for the period from 1.6.2001 to 1.10.2010. The investment was made in the year 2000-01. The shares were retained for more than ten years and were sold after such long time. These circumstances suggested that the investment was not bogus or investment made in penny stock. The shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short span.

6. The finding recorded by the appellate authority and confirmed by the appellate tribunal is based on material before them. They are in the realm of findings of fact. No error could be noticed in the findings and conclusion that the investment was longstanding and genuine and was not penny stock on the basis of which the capital gain was wrongly claimed.

6.1 On the facts of case, no question of law much less substantial question of law arises.

7. Resultantly, appeal is dismissed.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

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