

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 14.08.2020

Misc. Application No. 228 of 2020
And
Appeal No. 176 of 2020

Devendra Suresh Gupta
Ramdas Niwas,
Room No. 1, Chimatpada,
Marol Naka, Andheri (East),
Mumbai – 400 059.

...Appellant

Versus

Securities and Exchange Board of India.
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

... Respondent

Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Kinjal Bhatt, Advocate
i/b Vidhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

Misc. Application No. 228 of 2020:

There is a delay in filing the appeal. For the reasons
stated in the Misc. Application, the delay in filing the appeal
is condoned. Misc. Application is allowed.

Appeal No. 176 of 2020:

1. An order was passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) on November 28, 2014 imposing a penalty upon the appellant, against which an Appeal No. 117 of 2015 was filed before this Tribunal which was allowed by an order dated March 18, 2016. The operative portion of the order is as under:-

“In these circumstances, in the absence of any clear finding in relation to the relationship of the appellant with other noticees, we set aside the impugned order dated 28/11/2014 qua the Appellant and restore the matter to the file of AO of SEBI for passing fresh order on merits and in accordance with law.”

2. After remand no proceedings were initiated and after more than 45 months a fresh show cause notice dated December 30, 2019 was issued alleging that the appellant is a connected person. Based on the aforesaid, fresh replies were sought and after considering the matter the AO passed the impugned order dated February 25, 2020 imposing a penalty of Rs. 1 lakh. The appellant being aggrieved by the aforesaid order has filed the present appeal.

3. Having heard the learned counsel for the parties we are of the opinion that the impugned order cannot be sustained. The controversy in the present case is squarely covered by a decision of this Tribunal dated February 25, 2020 in Appeal No. 8 of 2020 Vasudev Ramchandra Kamat vs SEBI and other companion appeals wherein this Tribunal held as under:-

“4. After remand no proceedings were initiated and after three long years a fresh show cause notice dated August 1, 2019 was issued by the AO alleging that the appellant being part of the group entities had indulged in trading within the group resulting in no change of beneficial ownership and thereby created artificial volume in the scrip of the company which gave a false and misleading appearance in the trading in the scrip. Based on the aforesaid charge, replies were sought and after considering the matter the AO passed the impugned order dated November 22, 2019 imposing a penalty of Rs. 1 lakh. The AO being aggrieved by the aforesaid order has filed the present appeal.

5. Having heard the learned counsel for the parties, we find that the impugned order cannot be sustained. When the matter was remanded by this Tribunal a specific direction was issued that the matter is restored to the file of the AO and the AO was required to decide the matter afresh on merits. It means that the AO was required to decide the matter afresh pursuant to the show cause notice dated October 8, 2013. The AO was required to deal with the charges leveled against the appellant under the said show cause notice dated October 8, 2013. It was not open to the AO to issue a fresh show cause notice incorporating

a new charge. Consequently, on this short ground the impugned orders cannot be sustained and are quashed. Both the Appeals are allowed. No order as to costs.”

4. In the instant case, no steps were taken for forty five months and thereafter a fresh show cause notice was issued. The aforesaid decision is squarely applicable in the instant case. In the light of the aforesaid, the impugned order cannot be sustained and is quashed. Appeal is allowed at the admission stage itself without calling for a reply with no order as to costs.

5. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair,
Member

14.08.2020
msb