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

+ **ITA No. 776/2017**

PRINCIPAL COMMISSIONER OF
INCOME TAX (CENTRAL)- 1

..... Appellant
Through: Mr. Sanjay Kumar, Mr. Rahul
Chaudhary, Advocates.

versus

ANAND PERSHAD JAISWAL

..... Respondent

Through: None.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

09.10.2017

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1. The Revenue is in appeal against an order dated 10th February 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4961/Del/2014 for the Assessment Year ('AY') 2010-11.

2. The question sought to be urged by the Revenue is whether the ITAT erred in holding that the Assessee was entitled to the benefit of the *proviso* to Section 112 (1) of the Income Tax Act, 1961 ('Act') as well as the benefit of indexed cost of acquisition under Section 48 of the Act on sale of equity shares of Jagjit Industries Ltd. ('JIL'), a listed company. The Court finds that the ITAT has concurred with the Commissioner of Income Tax (Appeals) ['CIT(A)'].

3. The CIT (A), in the order dated 9th June 2014, correctly held that the long term capital gains arising due to the transfer of shares of JIL would be in

terms of the *proviso* to Section 112 (1) of the Act which provides that if tax exceeds 10% of the capital gains before giving the benefit of indexation under the second *proviso* to Section 48 then the excess shall be ignored for the purpose of computing tax payable by the assessee. The CIT(A) has directed the Assessing Officer ('AO') to work out the tax payable accordingly and further, to give the benefit if the tax so worked out is lower than the tax payable at 20% after allowing the indexation.

4. The ITAT has in the impugned order in para 5 held as under:-

“5. From the proviso, it is evident that where the tax payable in respect of the transfer of a long term capital asset in the case of a listed company exceeds 10% of the amount of the capital gain before giving effect to the provisions of second proviso to Section 48, then such excess shall be ignored for the purpose of computing the tax payable by the assessee. In the case under appeal before us, admittedly, the assessee is a non-resident and JIL is a listed company. Therefore, proviso to Section 112 (1) was squarely applicable and learned CIT (A) rightly directed to Assessing Officer to give benefit of proviso to Section 112 (1). We, therefore, find no infirmity in the order of the learned CIT(A). The same is sustained.”

5. The Court finds that no error has been committed by the ITAT in coming to the aforementioned conclusion. No substantial question of law arises for consideration.

6. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

OCTOBER 09, 2017/‘anb’