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

\+ ITA 350/2024

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -2 .....Appellant

Through: Mr. Sanjay Kumar and Ms. Easha, SC.

versus

M/S NISHIT CAPINVEST PVT. LTD. .....Respondent

Through: Mr. Salil Aggarwal, Senior Advocate with Mr. Madhur Aggarwal and Mr. Mahir Aggarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 12.07.2024

1. The Principal Commissioner of Income Tax [**'PCIT'**] impugns the order of the Income Tax Appellate Tribunal ['**Tribunal**'] dated 04 January 2024 and has proposed the following questions of law for our consideration:-

> "A. Whether on the facts and in law, the Ld. ITAT is correct in deleting the addition made u/s 68 of the 1.T. Act, 1961 amounting to Rs.42,85,60,000/- by stating that the assessee has duly discharged the onus that lay upon it u/s 68 of the Act despite the fact that assessee has failed to prove the creditworthiness and genuineness of parties who have paid the loan amount to the share subscribers of assessee company?
>
> B. Whether on the facts and in law, the Ld. ITAT is correct in ignoring that the share subscribers had received refund of loan from M/s Rishi Infratech Pvt Ltd, M/s Renu Proptech Pvt Ltd, M/s SAP Compusoft Pvt Ltd and BDR Builders and Developers Pvt Ltd, wherein it is found that the funds are being circulated among same individuals and Gupta family members and fund which was credited in the bank account was debited on the same day in which it was received?

C. Whether on the facts and in law, the Ld. ITAT is correct in ignoring the facts that the creditworthiness and genuineness of the share subscribers from whom share capital and share premium was received is not proved since they were showing huge exempt income from sale of penny stock namely Shilpi Cables Technologies Ltd and also shown meager returned income in their individual returns of income?

D. Whether on the facts and in law, the Ld. ITAT is correct in ignoring the facts that the major exit providers of M/s Shilpi Cables Technologies Ltd are M/s Touchstone Holdings Pvt Ltd, M/s Able Management Consultants, Mis Viable Management Consultants Pvt Ltd, M/s Nirmal Gupta and M/s Ajay Fincap Consultants Pvt Ltd which are shell companies and their shareholding and directorship is in close control of the Gupta family?

E. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in ignoring the report of SEBI, reports of Special Investigation Team (SIT) of the Hon'ble Supreme Court of India on Black Money and Investigation done by Investigation Wing of Income Tax Department on such issue?

F. Whether on the facts and circumstances of the case, the Ld. ITAT is correct in ignoring the Circular No. SMDRP/Policy/CIT-21/99, dated 14th September 1999 issued by SEBI which banned all negotiated deals including cross deals according to which off market purchases of shares done by the Shares Subscriber at a meager price of Rs. 20 per shares was clearly not a genuine transactions and was used as colorable device by the Shares Subscribers to gain from the future exponential rise in price of the scrip of M/s Shilpi Cable Technologies Ltd. through manipulated trading?”

2. The questions themselves arise in the context of what is alleged to be a penny stock, M/s Shilpi Cables Technologies Limited, and various investments and share application money which was received by that entity. The Income Tax Department [‘**Department**’] appears to have contended that the Assessing Officer [‘**AO**’] had undertaken a detailed investigation and had found itself unsatisfied with the explanation tendered in respect of the “source of source” of the concerned investors.

3. However, as is manifest from the reading of paragraph 8 of the order of the Tribunal, the Department did not make any addition in the

hands of at least two of the investors, each of whom was a Hindu Undivided Family ['**HUF**'], namely, Dinesh Gupta HUF or for that matter Rajesh Gupta HUF. The aforenoted observations of the Tribunal are reproduced hereinbelow: -

> "**8.** On appreciating the material on record and the submissions it comes up that primarily the learned AO was not satisfied with the source of source aspect of the investors and he has inquired into the investors' sources, trying to establish that the source of source did not have stand of its own and that they had some sort of control of the Gupta Family, who are the investors of assessee. It comes up that while trying to unearth the disinvestment in the alleged penny stock of Shilpi Cable Technologies Ltd. (SCTL), learned AO concluded that even the assessee company itself has provided exit to the share subscribers to the extent of Rs. 2,24,08,286/- and concluded that money of assessee is being circulated, which is introduced as share capital/ premium. This at first looked as a substantive ground supporting the conclusion of the learned AO that source of source remained unexplained. However, when the order of learned CIT(A) is considered in clause VIII on page 18, it establishes that on account of exempt income declared from the sale of equity shares of the alleged penny stock of SCTL, no addition was made in the hands of Dinesh Gupta HUF in assessment u/s 143(3) or in the hands of Rajesh Gupta HUF. The addition was made in the hands of Dinesh Gupta in assessment u/s 143(3). However, the same was deleted by learned CIT(A)-26, New Delhi and the order stands sustained by the Tribunal in ITA no. 8571/De1/2019 order dated 6.4.2021. Lastly, there was no allegation of Renu Gupta having source arising out of disinvestment of alleged penny stock and primarily her source was refund of loan in certain companies or sale of equity shares of Mangal Kalas Services Pvt. Ltd. Thus, learned CIT(A) has not erred in not finding substance in the conclusion of learned AO that the source of source is tainted."

4. The addition which was made in the hands of another investor, namely, Dinesh Gupta as an individual was ultimately deleted by the Commissioner of Income Tax (Appeals) [**'CIT(A)'**] and which order ultimately came to be sustained by the Tribunal. We are informed that the aforesaid order of the Tribunal had formed subject matter of challenge in **Principal Commissioner of Income Tax v. Sh. Dinesh Gupta** [ITA 245/2022], which ultimately came to be dismissed on 31

January 2024.

5. We consequently find that the appeal fails to raise a substantial question of law and shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 12, 2024/*vp*