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

\+ ITA 245/2022

PRINCIPAL COMMISSIONER OF INCOME TAX, NEW DELHI

..... Appellant

Through: Mr.Sanjeev Menon, Jr.SC for Mr.Zoheb Hossain, Sr.SC.

versus

SH. DINESH GUPTA ..... Respondent

Through: Mr.Salil Aggarwal, Sr.Adv with Mr.Madhur Aggarwal, Mr.Mahir Aggarwal and Mr.Uma Shankar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **31.01.2024**

1. This appeal is directed against the order of the Income Tax Appellate Tribunal ['**ITAT**'] dated 06 April 2021 which has essentially affirmed the view which was expressed by the Commissioner of Income Tax (Appeals) ['**CIT(A)**'].

2. The issue itself pertains to the purchase of stocks by the assessee in Shilpi Cable Technologies Ltd. and the claim for exemption from Long Term Capital Gains by virtue of Section 10(38) of the Income Tax Act, 1961 ['**Act**'].

3. On due consideration of the order rendered by the CIT(A), the ITAT has ultimately come to hold as follows:-

> "**13**. We have considered the rival submissions and perused the findings of the authorities below. The A.O in this case noted that assessee has sold the shares of Shilpi Cable Technologies Ltd., and claimed exempt under section 10(38) of the LT. Act of the impugned

amount. The A.O. merely declared this company to be penny stock company without bringing any evidence on record. Though the A.O. discussed in the assessment order that Investigation Wing as well as SEBI revealed that Shilpi Cable Technologies Ltd., is engaged in scam, but, no details have been brought on record as to how in assessment year under appeal this company was engaged in scam or indulged in price raise in shares. The Ld. D.R. referred to the assessment order in the case of M/s. Renu Proptech Pvt. Ltd., in which it is mentioned that SEBI has suspended the share transactions of this company in the year 2017. But, the assessment year under appeal is A.Y. 2016-2017, therefore it would have no impact on the transactions carried-out by the assessee in assessment year under appeal. The A.O. thereafter did not bring any evidence on record as to how the transaction of the assessee was not genuine. The Ld. CIT(A) considering the details on record found that there is an increase in the turnover and profit of this company and this company has also declared substantial income and paid the taxes also. There were no basis for the A.O. to hold this company to be penny stock company. The Ld. CIT(A) also found that this company has declared dividend to the shareholders as well as have reputed customers. The assessee kept the shares for more than one year and sold the shares through recognized stock exchange on which SIT is also paid. The assessee purchased the shares through banking channel as well as sold the shares through online trading platform of NSE. The payment is also received through banking channel. This company is actually engaged in manufacturing and has substantial assets also. The Ld. CIT(A) also found that in the connected case of the assessee 1.e., Shri Dinesh Gupta [HUF], similarly investment was made in the shares of Shilpi Cable Technologies Ltd., and long term capital gains was claimed exempt under section 10(38) of the, LT. Act. Thus, no evidence has been brought on record by the A.O as to how the assessee's transactions were not genuine. It was also brought on record that assessee is a habitual investor as is evident from the DEMAT Statement with the Bank. Thus the issue is on better footing as against the case of Smt. Shivani Gupta (supra). Following the reasons for decision in the case of Smt. Shivani Gupta (supra), we do not find any justification to interfere with the Order of the Ld. CIT(A) in deleting the addition. The decisions relied upon by the Ld. D.R. are thus clearly distinguishable on facts. Accordingly, appeal of the Department is dismissed."

4. Mr. Menon, learned counsel appearing in support of the appeal draws our attention to an alleged ongoing investigation by the Securities Exchange Board of India ['**SEBI**'] as well as the Serious Fraud Investigation Office ['**SFIO**'] in respect of Shilpi Cable

Technologies Ltd. as well as the assessee. According to learned counsel, this material would clearly indicate that the assessee was not entitled to the grant of any exemption.

5. We, however note that the material which is sought to be alluded to by Mr. Menon did not even exist at the time when the assessment order came to be passed nor does it appear to have been place for the consideration of the CIT(A) or the ITAT.

6. The ongoing investigation, in any case would neither be impacted nor impeded or influenced by any findings that have been returned by the ITAT while considering whether Long Term Capital Gain benefits were liable to be claimed.

7. We note that the findings of fact as recorded by the Tribunal could not be assailed before us. Since the issue itself appears to be concluded by findings of facts, we find that no substantial question of law arises in the present appeal. Consequently, we see no reason to interfere with the impugned order.

8. Subject to the observations appearing in para 6 of this order, the appeal stands dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 31, 2024/MJ