$~63

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

\+ ITA 60/2026 & CM APPL. 5764/2026, CM APPL. 5765/2026

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 .....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC.

versus

TOSHIBA CORPORATION .....Respondent

Through: Mr. Ankul Goyal, Advocate.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

<u>O R D E R</u>

% **28.01.2026**

1. The instant appeal is directed against the order dated 26.07.2024 passed by the Income Tax Appellate Tribunal, Delhi Bench "D", Delhi (*hereinafter referred to as 'the Tribunal'*) whereby, the appeal filed by the Department was rejected by the Tribunal on the ground that the Assessing Officer has assumed the transactions of purchase and sale of shares to be that of purchase and sale of assets, without there being any material on record.

2. While holding so, the Tribunal recorded its findings in paragraph 8 and 9 which are reproduced hereinbelow:-

> *"8. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an undisputed fact that the assessee has deducted tax at*

source on the payments made for purchase of shares from the non-resident sellers namely; Sangista Kshetry, Hersh Kshetry & Nina Kshetry.

9. A perusal of order passed u/s. 201(1)/201(1A) of the Act shows that the Assessing Officer has passed an order purely on surmises and conjectures changing the nature of transaction of 'sale of shares' to 'sale of assets'. The AO in proceedings u/s 201 of the Act has gone beyond his jurisdiction in re-characterizing nature of transaction. Further it is an undisputed fact that the assessee has deducted tax at source @10% plus surcharge on consideration paid for purchase of shares and has deposited the TDS to the Government exchequer. Thus, in light of undisputed facts the assessee cannot be held an "assessee in default". We find no infirmity in the impugned order; hence, the same is upheld."

3. On going through the record, more particularly, the order of the Assessing Officer (AO) dated 12.11.2021, we find that the AO has raised a demand of interest under Section 201(1A) of the Income Tax Act, 1961 holding that the respondent-assessee has deducted tax at source with lower rate while considering the purchase to be that of shares, whereas the purchase, as a matter of fact was that of assets.

4. While holding that in matters relating to deduction of tax that too when the respondent-assessee had correctly considered the transaction to be purchase of shares, the AO could not have gone into the exercise of holding that the purchase as a matter of fact was that of assets.

5. We do not find any reason to interfere in the findings recorded by Commissioner of Income Tax (Appeals)-43 and the Tribunal, as no question of law arise out of concurrent findings recorded by two appellate authorities. The appeal, therefore fails.

6 The appeal with all pending applications stand disposed of.

DINESH MEHTA, J.

VINOD KUMAR, J.

JANUARY 28, 2026/MR