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

\# **CNR No. DLHC010727182025**

\+ ITA 478/2025

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 .....Appellant

Through: Mr.Ruchir Bhatia SSC, Pratyaksh Gupta JSC and Anant Mann JSC

versus

UTTAM CHAND RAKESH KUMAR .....Respondent

Through: Mr. Abhimanyu Jhansa, Mr. Thonpinao Thangal and Ms. Ayushi Srivastava, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

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

% 12.08.2026

1. By way of the present appeal under Section 260A of the Income Tax Act, 1961 (herein after referred to as 'Act of 1961'), the Revenue has challenged the order dated 18.12.2024 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F' New Delhi (hereinafter referred to as 'Tribunal') in Appeal No. 1653/De1/2023 for assessment year 2018-19.

2. The order under challenge before the Tribunal was, an order passed by the Principal Commissioner of Income Tax (herein after referred to as 'Commissioner') in exercise of jurisdiction under Section 263 of the Act of 1961 on 31.03.2023, whereby he had set aside the order of the Assessing Officer and directed him to levy tax at higher rate on the additions of Rs. 3.75

crores towards unexplained investments and receivables made under Section 69 read with Section 115BBE of the Act of 1961.

3. Against the aforesaid order, the assessee preferred an appeal before the Tribunal, which came to be allowed by the impugned order holding *inter-alia*, that the addition in question was essentially in the nature of business income and thus could not have been added under Section 69 of the Act of 1961.

4. Mr.Mann, learned Junior Standing Counsel for the appellant argued that since the excess stock/undisclosed cash etc. were found during the course of search, the Commissioner was justified in issuing direction to levy higher rate of tax and the Tribunal has committed an error of law in treating the income to be a business income.

5. Learned counsel for the respondent, on the other hand, invited court's attention towards the assessment order dated 28.03.2021 and the findings of the Tribunal and pointed out that there is not an iota of evidence showing that any cash or excess stock was found.

6. He pointed out that as a matter of fact the Assessing Officer had found it to be a case of shortage of stock and, therefore, the entire foundation of revenue's contention is premised on incorrect basis.

7. Having heard the learned counsel for the parties, we are of the considered opinion that neither the Assessing Officer nor the Commissioner has recorded any finding about the unearthing of or existence of any undisclosed or unaccounted assets or investments. The absence of unexplained investments, renders the very applicability of Section 69 of the Act of 1961 out of question. Since the very applicability of Section 69 of the Act of 1961 has not been established, the applicability of higher rate of tax

under Section 115BBE of the Act of 1961, goes out of question.

8. We, therefore, do not find any merit or substance in the present appeal, for which, it is hereby dismissed.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

AUGUST 12, 2026
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