$~25 & 26

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

\+ ITA 243/2025

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI-20 .....Appellant

Through: Mr. Abhishek Maratha, Senior Standing Counsel with Mr. Apoorv Agarwal and Mr. Viplav Acharya, Junior Standing Counsels with Ms. Nupur Sharma, Mr. Gaurav Singh and Mr. Himanshu Gaur, Advocates.

versus

GULSHAN KUMAR SETHI .....Respondent

Through: Mr. Aditya Kumar Garg, Advocate.

26

\+ ITA 245/2025

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI-20 .....Appellant

Through: Mr. Abhishek Maratha, Senior Standing Counsel with Mr. Apoorv Agarwal and Mr. Viplav Acharya, Junior Standing Counsels with Ms. Nupur Sharma, Mr. Gaurav Singh and Mr. Himanshu Gaur, Advocates

versus

GULSHAN KUMAR SETHI .....Respondent

Through: Mr. Aditya Kumar Garg, Advocate.

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

O R D E R

% **20.07.2026**

1. Mr. Abhishek Maratha, learned Senior Standing Counsel for the Department/ appellant argued that the order dated 25.10.2024 passed by the the Income Tax Appellate Tribunal, *Delhi Bench 'B' New Delhi* [hereinafter referred to as (*Tribunal*)] might be justified in holding that the assessee has proved the transaction as the same were carried through proper banking channels, but merely because the transactions were proved, the stand of the Assessing Officer (AO) that the transactions were bogus or fictitious orchestrated to camouflage or show a long term capital gain.

2. He argued that as a matter of fact, the assessee had falsely claimed rather procured a huge long term capital gain running into crores of rupees, which is evident from a simple fact that for a sum of Rs. 50,00,000/- invested on 29.11.2013, the assessee got 500000 preferential shares allotted (@ Rs.10/- each) on 29.11.2013, out of which he sold 311000 preferential shares for a staggering sum of Rs. 11,26,32,076/- and remaining 189000 shares for a sum of Rs. 6,47,24,491/- during Assessment Years 2015-16 and 2016-17 respectively, within a period of two years from the allotment purchase of such preferential shares.

3. He argued that given the meagre profit of two lakh to three lakh during the financial year, the said company, namely, Gracious Software Ltd., had earned and hardly any turnover, it cannot be believed that value of shares of such company can see such phenomenal upsurge in the price of its shares. He added that it was a clear case of rigging of profit.

4. The matter requires consideration. The appeal is thus admitted on the following substantial questions of law:

(i) Simply because the transaction is shown to have been done through proper banking channels, whether transaction can be held to be a valid transaction, not meant to camouflage or derive fictitious long term capital gain?

(ii) Whether in the facts and circumstances of the case, the ITAT was legally justified in allowing the assessee's appeal and setting aside the disallowance made by the AO in relation to the exemption of income being long-term capital gain claimed by the assessee under Section 10(38) of the Income Tax Act, 1961?

5. List the appeal in due course as per its own turn.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

JULY 20, 2026/*nd*