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

\+ ITA 383/2024

PR. COMMISSIONER OF INCOME TAX-1,
DELHI .....Appellant

Through: Mr. Sanjay Kumar & Ms. Easha, Standing Counsels.

versus

M/S EARTH STONE HOLDING (TWO) PVT. LTD. .....Respondent

Through: None

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

O R D E R

% **24.07.2024**

CM APPL. 41532/2024 (80 Days Delay in Refiling)

Bearing in mind the disclosures made, the delay of 80 days in refilling the appeal is condoned.

Application stands disposed of.

ITA 383/2024

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal ["**Tribunal**"] dated 05 October 2023 and posits the following questions of law for our consideration:

> "A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in law and on the facts of the case in deleting the addition of Rs.8,12,22,273/- made by the AO on account of excess dividend received by the assessee against the terms and conditions laid down in the Memorandum of Association by

ignoring the facts that the AO had discussed all the issues in details in the assessment order on which addition was made?

B. Whether on the facts and circumstances of the case, the Ld. ITAT has erred in deleting the addition made by the AO ignoring the facts that the assessee had received the excess dividend by resorting to colourful devices which is evident form the facts of the case and transaction carried by the assessee?"

2. We note that insofar as the principal question of taxability of dividend is concerned, the Tribunal has observed as follows:

> "**9.** It is observed that the Company JEPL obtained the consent of majority of the share holders and altered the terms and conditions as per which the dividend at 14% was allowed to be compounded annually from the date of allotment. The said alternation of the terms and conditions was done in accordance with Section 106 of Companies Act and also a Resolution was passed on 23/04/2014 to that effect, accordingly, the assessee was paid dividend at 14% compounded annually from the date of allotment. The Company JEPL, paid dividend distribution taxes (DDT) u/s 115-O of the Act, the A.O. treated the additional dividend received by the assessee as taxable on the ground that there is a change in the terms and conditions with respect to the issue of dividend. It is worth to observe that the original terms and conditions are permitted to amend with the consent of at least 75% of the shares holders of these shares, which has been complied in the present case. As per the provision of Section 10(34) of the Act, the dividends which are referred in Section 150-O of the Act, are exempt and as per Section 115-O, domestic companies are liable to pay Dividend Distribution Tax on the amount declared as dividends, accordingly, any dividend declared/ paid by a domestic Company on which DDT has been paid, is exempt u/s 10(34) of the Act. In the present case, the Company paying dividends to the assessee has duly paid DDT and, therefore, the assessee is entitled to treat the dividend as exempt u/s 10(34) of the Act. Thus, in our considered opinion, we find no error or infirmity in the order of the CIT(A) in deleting the addition and find no merit in the Grounds of Appeal of the Revenue. Accordingly, we dismiss the appeal filed by the Revenue."

3. It thus becomes apparent that once the provisions of Section 115-O of the Act were found to have been complied with, the handout to the assessee would have been in the nature of dividend and thus, exempt in terms of Section 10(34) of the Act.

4. We, consequently, find no justification to interfere with the

view as taken by the Tribunal. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 24, 2024/kk