

आयकर अपीलिय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं. 1832/दिल्ली/2023 (नि. व. 2020-21)
ITA No.1832/DEL/2023 (A.Y.2020-21)

M/s. Superb Mind Holdings Ltd.,
C/o Anita and Gadia, Chartered Accountant,
F-45, Bhagat Singh Market, New Delhi 110001
PAN AAZCS-2945-Q

..... अपीलार्थी/ Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,
Circle International Tax 3(1)(2), New Delhi

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Salil Aggarwal, Sr. Advocate with
S/Shri Shailesh Gupta, CA
Madhur Aggarwal, and
Uma Shankar, Advocates

प्रतिवादीद्वारा/ Respondent by : Shri Vijay B Vasanta, CIT-DR

सुनवाई की तिथि/ Date of hearing : 18/07/2024

घोषणा की तिथि/ Date of pronouncement : 26/07/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 27.04.2023 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), for assessment year 2020-21.

2. The assessee in appeal has raised multiple grounds on the single issue i.e. assailing addition of Rs. 39,95,46,592/- on account of long term capital gains on sale of shares under section 112 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Shri Salil Aggarwal appearing on behalf of the assessee submitted that the assessee is registered in Mauritius and is holding tax residency certificate of Mauritius. The assessee is engaged in the business of making investments. The assessee had made investment in Indian company namely Pearl Retail Solutions Pvt. Ltd. The assessee purchased 204199 shares in AY 2011-12 and 1,10,800 shares of the said company in AY 2012-13. During the period relevant to assessment year under appeal, the assessee transferred 69,999 shares of M/s. Pearl Retail Solutions Ltd. to M/s. LEI Singapore Holdings Pte. Ltd., for a consideration of Rs. 40,02,37,407/-. LEI Singapore Holdings Pte. Ltd. deducted tax at source on the aforesaid payments @10.92% u/s. 195 of the Act. The assessee claimed refund of TDS so deducted.

3.1 The assessee's claim of refund of TDS Rs. 4,37,05,930/- has been rejected by the department, hence, the present appeal. The Id. Counsel submitted that identical issue was considered by the Tribunal in assessee's own case in the immediate preceding year i.e. AY 2018-19. The transfer of shares during the relevant period is the continuation of transaction which started in AY 2018-19. In AY 2018-19 the assessee had sold 2,45,000 shares of the same company for a consideration of Rs. 74,15,54,375/-. In order to substantiate that the issue in appeal is identical to the one considered by the Tribunal in AY 2018-19, he

referred to the show cause notice issued by the AO dated 29.08.2022 (at page no. 182 of the paper book). He pointed that in the said show cause, the AO has mentioned that the factual matrix of the case is same as that in AY 2018-19. He further referred to draft assessment order para 12.2, wherein the AO has again observed that the case of the assessee for AY 2018-19 was similar wherein the assessee was found not eligible to treaty benefits under India-Mauritius DTAA and the long term capital gains were held taxable in India under the provisions of the Act. The Id. Counsel placed on record a copy of Tribunal order in assessee's case for AY 2018-19 in ITA No. 1568/Del/2022 decided on 05.03.2024, wherein identical issue was considered by the Coordinate Bench.

4. Shri Vijay B Vasanta representing the department vehemently defending assessment order submitted that identical issue is under consideration before the Hon'ble Supreme Court of India in SLP filed by the Department in the case of Blacks Stone Capital Partners (Singapore) VI FDI Three Pte. Ltd. The Hon'ble Apex Court has stayed the judgment of Hon'ble High Court and the matter is still pending for final adjudication. In so far as facts of the instant case are concerned, he fairly admitted that the Coordinate Bench in assessee's own case in the preceding assessment year has considered this issue.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decisions on which respective sides have placed reliance to support their contentions. It is an undisputed fact that the assessee had made investment in Pearl Retail Solutions Pvt. Ltd., an Indian company in AY 2011-12 and 2012-13. The assessee had sold

part of its shareholding in AY 2018-19 and the remaining part of share holding comprising of 69,999 shares of Pearl Retail Solutions Pvt. Ltd., were sold by the assessee for a consideration of Rs. 40,02,37,407/- to LEI Singapore Holdings Pte. Ltd. in the impugned AY. The assessee had claimed long term capital gains arising from sale of shares as exempt from tax in light of Article 13(4) of India-Mauritius DTAA. LEI Singapore Holdings Pte. Ltd. deducted tax at source on the payments made to the assessee. Now, the assessee is seeking refund of withholding tax deducted on the aforesaid transaction. We find that similar transaction of transfer of shares of Pearl Retail Solutions Pvt. Ltd. was undertaken by the assessee in AY 2018-19. The assessee claimed refund of TDS deducted on sale of shares. The matter travelled to the Tribunal, the Coordinate Bench after considering the facts of the case, provisions of Article 13(4) of the India-Mauritius DTAA and placing reliance on the decision rendered in the case of *Bid Services Division (Mauritius) Ltd. vs. Authority of Advance Ruling (Income Tax) 453 ITR 461 (Bom)* and the decision of Hon'ble Apex Court in the case of *Vodafone International Holding BV vs. UOI 341 ITR 1* held that long term capital gain on sale of shares in the case of assessee is not liable to be taxed in India. For the sake of completeness the relevant extract of findings of the Tribunal after considering various decisions on this issue are as under:-

"9. Ratio of the above decision squarely applies to the facts of the assessee's case. As could be seen from the above decision of Bombay High Court the assessee which was holding valid TRC of Mauritius sold its investments which were made prior to 01.04.2017. The Hon'ble High Court considering the press release issued by Finance Ministry's clarification on tax residency certificates, Circular of CBDT No.789/2000, Article 13(4) of India – Mauritius DTAA, press release of CBDT on Protocol of amendment of convention for avoidance of double taxation and the judgments of Hon'ble Supreme Court in the

case of Vodafone International Holdings B.V. Vs. Union of India & Another (supra) and Union of India Vs. Azadi Bachao Aandolan & another (supra) the Hon'ble High Court held that the investments made prior to 01.04.2017 have been grandfathered and will not be subject to capital gain taxation in India. The Hon'ble High Court considering the press release dated 29.08.2016 issued by the CBDT post amendment to Mauritius DTAA which was effect to from 01.04.2017 held that the press release expressly provides for grandfathering of capital gains exemption provided under the Erstwhile Mauritius DTAA. The Hon'ble High Court held that the protocol provides for source based taxation of capital gains arising from aviation of shares acquired w.e.f. 01.04.2017 in a company resident in India from FY 2017 & 2018. The Hon'ble High Court thus, held that the investments made before 01.04.2017 have been grandfathered and will not be subject to capital gains taxation in India. Similar is the situation in the case on hand before us. The assessee undoubtedly made investments in Indian company namely M/s Pearl Retail Solutions Pvt. Ltd. in AY 2011-12 and 2012-13. During the impugned assessment year i.e. 2018-19 assessee company being a resident of Mauritius and holding a valid TRC has sold its part shareholding to LEI Singapore Holdings Pte Ltd. and reported long term capital gain and this long term capital gain claimed as exempt in view of Article 13(4) of DTAA between India & Mauritius. Therefore, applying the ratio of the decision of the Bombay High Court since the investments were made by the assessee a Mauritius company holding a valid TRC prior to 01.04.2017 the resultant capital gain is not liable to be taxed in India. Respectfully following the decision of the Hon'ble Bombay High Court (supra) we allow the grounds of appeal of the assessee."

6. The show cause notice dated 29.08.2022 issued to the assessee and observations of the AO in the draft assessment order clearly indicate that the factual matrix of the case in the impugned assessment year is identical to one considered in AY 2018-19. This fact has also not been disputed by the department. Thus, in the facts of the case and the decision of the Coordinate Bench on identical set of facts in assessee's own case in the preceding assessment year, we have no hesitation in allowing ground no. 1 of appeal for parity of reasons.

7. The ground no. 2 to 9 of appeal are argumentative and are in support of ground no. 1. Hence, require no separate adjudication.

8. In the result, appeal of the assessee is allowed, in the terms aforesaid.

Order pronounced in the open court on Friday the 26th day of July, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 26/07/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI