

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.2561/Del./2016
Assessment Year 2011-2012

The DCIT, International Taxation Circle-3(1)(1), Room No.419, E-2, Dr. S.P.Mukharjee Civic Center, J.L.N. Marg, New Delhi.	vs	M/s. Zaheer Mauritius, C/o. SRBC & Associates LLP, 4 th and 5 th Floor, Plot No.2B, Tower-2, Sector- 126, Noida – 201 304. PAN AAACW7187P
(Appellant)		(Respondent)

For Revenue :	Shri G.K. Dhall, CIT-D.R.
For Assessee :	Ms. Ananya Kapoor, Advocate.

Date of Hearing :	31.10.2019
Date of Pronouncement :	01.11.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-43, New Delhi, Dated 10.02.2016, for the A.Y. 2011-2012, on the following grounds :

- (i) *“Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in*

holding that the gains arising to the assessee on the transfer of compulsorily Convertible Debentures(CCDs) to M/s Vatika Ltd. is in the nature of capital gain and not in the nature of interest income as held by the Assessing Officer on the basis of Advance Ruling dated 21.03.2012 in AAR No. 1048 of 2011 pronounced by the Hon'ble Authority for Advance Ruling.

- (ii) Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that the gains arising to the assessee on the transfer of Compulsorily Convertible Debentures(CCDs) to M/s Vatika Ltd. is in the nature of capital gain and shall not be taxable in India under Article 11 of the Double Taxation Avoidance Agreement between India and Mauritius.*
- (iii) Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in following the decision of the Hon'ble High Court*

dated 30.07.2014 in W.P.(C)1648/2013 when the decision of the Hon'ble High Court has not been accepted by the department and the SLP filed by the department has been admitted by the Hon'ble Supreme Court.

(iv) The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time of or before the hearing of the appeal.

2. The Ld. CIT(A) reproduced the submissions of the assessee in the appellate order and passed the following order, allowing the appeal of assessee.

4. *Findings/ Determination*

I have duly examined the facts at hand, gone through the submissions and heard the counsels.

4.1 *The appellant submitted vide letter dated 03.02.2016 as follows:-*

“The discussion on the merits of the writ petition took place before the Hon'ble High Court during FY 201314. On 30 July 2014, the Hon'ble

High Court pronounced, its order in favour of assessee and held that gains arising from transfer of CCDs are in the nature of capital gains and not interest. Further, it was held that the agreements between the assessee and the buyer reflected genuine commercial venture and that the legal terms of the ajran.gem.ent agreed, to by the parties for commercial reasons cannot be ignored or the corporate veil of the entity may not be lifted.”

4.2 *The assessment order for AY 2011-12 was passed on 09.04.2014 in pursuance to Ruling of Hon’ble AAR dated 21.03.2012. The appellant had filed a writ petition against aforesaid Ruling of the AAR on 07.03.2013. The Hon’ble Delhi High Court vide order dated 30.07.2014 adjudicated thereupon. The order is reported in 47 taxmann.com 247 (Del). Among other things, the Hon’ble High Court held at paras 15 and 31 as follows:-*

“15. Under normal circumstances, it is undeniable that gains arising from transfer of a debenture, which is a capital asset in the hands of the transferor, in favour of a third party, would be capital gains and not interest. In other words, if a debenture (which is a capital, asset) is transferred, by a holder to a third party, the gains that arise i.e. difference between the costs of purchase, and the sale consideration would be capital gains in the hands of a transferor. The dispute in the present case arises only because it has been held that the transaction between the petitioner and the Vatika is a sham transaction and is essentially a transaction of loan to Vatika which has been camouflaged as an investment in shares and CCDs of the JV Company.

31. Thus, in terms of the policy of the Government, the petitioner could invest in a project of the requisite size/ nature and an investment into CCDs would be reckoned as equity. The policy with regard to external commercial borrowings had other conditions and it is apparent that the petitioner found, the investment in CCDs as the most appropriate route for making its investment in real estate, in accordance with the policy of the Government of India. In these circumstances, it ought not to be readily inferred, that the entire structure of the transaction was designed solely for the purposes of a voiding tax.”

In view of the aforesaid elucidation by the Hon’ble High Court, ground nos. 2 and 3 stand adjudicated in favour of the appellant. The appellant succeeds with regard to these grounds

3. Learned Counsel for the Assessee at the outset submitted that issue involved in the Departmental appeal is covered by Judgment of Hon'ble Delhi High Court Dated 30.07.2014 in the case of assessee in W.P.(C) 1648/2013 & CM No.3105/2013 Dated 30.07.2014 as reproduced in the assessment order above. Copy of the Order is placed on record.

4. The Ld. D.R. also stated that the issue is covered by Judgment of Hon'ble Delhi High Court in the case of same assessee vide Order Dated 30.07.2014.

5. Considering the above facts and in the light of findings of the Ld. CIT(A), we are of the view that the issue is covered in favour of assessee by Judgment of Hon'ble Delhi High Court Order Dated 30.07.2014, which fact is also confirmed in Ground No.3 of the Departmental Appeal (supra). Respectfully following the Judgment of Hon'ble Delhi High Court Dated 30.07.2014, we dismiss the appeal of Department as no infirmity have been pointed-out in the Order of the Ld. CIT(A) by following the Judgment of Hon'ble Delhi High Court in the case of same assessee.

6. In the result, appeal of Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.