

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 414/Del/2018 : Asstt. Year : 2013-14**

DCIT, Circle-3(1)(1), International Taxation, New Delhi	Vs	Zaheer Mauritius, C/o SRBC & Associates LLP, 4 <sup>th</sup> & 5 <sup>th</sup> Floor, Plot No. 2B, Tower-2, Sector-126, Noida, U.P.-201304
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACW7187P</b>		

**Assessee by : Ms. Ananya Kapoor, Adv.**

**Revenue by : Sh. Sanjog Kapoor, Sr. DR**

**Date of Hearing: 01.09.2021**

**Date of Pronouncement: 08.09.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of Id. CIT (A)-43, New Delhi dated 30.10.2017.

2. Following grounds have been raised by the revenue:

*"(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 gains 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."*

3. Brief facts of the case are that the assessee filed its return of income on 27.09.2013 declaring total taxable income at Nil. The assessee company is incorporated under the laws of Mauritius and is a tax resident of Mauritius. The assessee has invested into securities of an Indian company, SH Tech Park Developers Pvt. Ltd. which was engaged in development and construction of projects in India along with another Indian company, Vatika Ltd. in the ratio of 35:65. During the course of assessment proceedings, the assessee was asked to show cause as to why the gain from sale of CCD's & Equity shares should not be taxed as interest income instead of 'capital gains' within the meaning Section 2(28A) of the Act.

4. The issue has been dealt by the Hon'ble Authority of Advance Ruling (AAR) while dealing with Article 11 and Article 13. The Hon'ble AAR with regard to Section 2(28A) and Article 11 of the DTAC held as under:

*"19. In conclusion, Article 11 deals with the treatment of income from debt-claims of every kind, whereas, Article 13 deals with gains from the alienation of any property. Article 11 being a specific provision will be applicable in the present case where Vatika has paid a fixed predetermined return to the Applicant Here we may note that in our opinion, Vatika and SHT are one and the same. Hence the amount paid by Vatika is clearly towards the debt that was taken by SHT from the Applicant. Hence the appreciation in the value of CCDs is clearly payment of "interest" and is taxable under the provision of Article 11 of the DTAC.*

*20. We, accordingly, answer the question that the entire gains arising to the applicant on the sale of equity shares and CCDs are not exempt from capital gain tax in India under DTAC with Mauritius. The gains arising on the sale of CCDs being interest within the meaning of Section 2(28A) of the Act and Article 11 of the DTAC and are taxable as such."*

5. Against the above ruling of AAR the assessee filed writ petition before Hon'ble Delhi High Court who vide order dt. 30.07.2014 in W.P.(C) 1648/2013 & C.M. No. 3105/2013, has decided the issue against the findings of the AAR and has held that:

*"In the present case, there 'is sufficient commercial person for the petitioner to have routed its investment in the real estate project through equity and CCDS. The pre-mature exit options as recorded in the SHA and the minimum return assumed by Vatika on its investment are clearly commercial agreements between the parties. These by itself do not*

*change the legal nature of the transaction entered into between the parties. The terms of the arrangements between Vatika and the petitioner reveal that the JV was a genuine commercial venture, in which both partners had management rights. The call and put options were defined commercial options capable of being elected by the parties. In our opinion, there is, thus, no reason to ignore the legal nature of the instrument of a Compulsorily Convertible Debenture or to lift the corporate veil to treat the JV Company and Vatika as Single entity.*

*In view of the above, the writ petition is allowed and the impugned ruling is set aside.”*

6. The AO held that the revenue has not accepted the above order of Hon'ble Delhi High Court and has filed SLP before Hon'ble Supreme Court which is pending for adjudication and made addition on the amount in contravention to the existing ruling of the Hon'ble Jurisdictional High Court. The Id. CIT (A) gave relief following the decision of the Hon'ble High Court.

7. We find from the grounds raised by the revenue that the appeal has been filed before the Tribunal solely based on the foundation that the SLP filed by the revenue has been admitted and notice has been issued in this case. Since, at this juncture the order of the Hon'ble High Court prevails on the substantive question of law which stands adjudicated in favour of the assessee, we hereby dismiss the appeal of the revenue.

8. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 08/09/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 08/09/2021**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**