

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 476/Del/2018
(Assessment Year : 2014-15)

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| DCIT Circle – 3(1)(1), International Taxation New Delhi PAN No. AAACW 7187 P | Vs. | Zaheer Mauritius C/o. SRBC & Associates LLP, 4 th & 5 th Floor, Plot No.2B, Tower-2, Sector – 126, Noida-201 304 |
| (APPELLANT) | | (RESPONDENT) |

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|-------------|-----------------------------|
| Assessee by | Mrs. Ananya Kapoor, Adv. |
| Revenue by | Shri Kumar Pranav, Sr. D.R. |

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| Date of hearing: | 08.09.2021 |
| Date of Pronouncement: | 08.09.2021 |

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 30.10.2017 of the Commissioner of Income Tax (Appeals)-43, New Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company incorporated under the laws of Mauritius and is a tax resident of Mauritius. Assessee filed its return of income for A.Y. 2014-15 on 30.09.2014 declaring NIL income. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 31.08.2015 and duly served on the assessee. Thereafter draft assessment order was passed on 27.09.2016 u/s 144C(1) r.w.s 143(3) of the Act which was duly served on the assessee. Thereafter, assessment was framed u/s 143(3) r.w.s 144C(3) of the Act vide order dated 14.12.2016 and the total income was determined at Rs.4,75,97,440/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 30.10.2017 in Appeal No.180/2016-17 deleted the addition and thus decided the issue in favour of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds of appeal :

- “1. *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 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.*
2. *Whether on the facts 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 on Compulsory Convertible*

Debentures (CCDs) to M/s. Vatika Ltd. is in the nature of capital gainss and shall not be taxable in India under Article 11 of the Double Taxation Avoidance Agreement between India and Mauritius.

3. *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.*
4. *The appellant prays for leave to add, amend modify or alter any grounds of appeal at the time of or before the hearing of appeal."*

4. AO has noted that in the year 2007, assessee had invested into securities of an Indian company, SH Tech Park Developers Private Limited, which was engaged in development and construction of projects of India, along with another Indian company, Vatika Limited, in the ratio of 35:65. During the year under consideration assessee sold 8,957 equity shares and 17,63,71,304 CCDs issued by SH Tech Park to Vatika and had declared total gain of Rs. 6,82,09,076/- (comprising gains of Rs. 4,75,97,153/- on sale of CCDs and Rs.2,06,11,923/- on sale of equity shares). Assessee was asked to show-cause as to why income from sale of CCDs and equity shares not be taxed as interest income instead of 'capital gains' as considered by the assessee. Assessee made the submissions which was not found acceptable to AO. AO noted that the transaction in respect of sale of CCDs was identical to those transactions executed by the

assessee in A.Y. 2011-12 & 2013-14 wherein his predecessor had examined the issue in detail and had held the gains arising from the sale of CCDs to be taxable. He also noted that the issue had not attained the finality as the matter was pending before the Hon'ble Supreme Court but to protect the interest of Revenue and to maintain the consistency with the decision taken in earlier years in assessee's own case, he considered the gains on sale of CCDs to be taxable. He accordingly considered the income arising on transfer of CCDs at Rs.4,75,97,440/- as taxable. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who noted that for A.Y. 2011-12, assessee had sought ruling on the taxability of capital gains arising on sale of CCDs before the Authority for Advance Ruling (AAR). The AAR decided the issue against the assessee and held that the gain from transfer of CCDs to be chargeable to tax as interest income. Against the ruling of the AAR, assessee carried the matter before the Hon'ble Delhi High Court. Hon'ble Delhi High Court vide order dated 30.07.2014 decided the issue in favour of the assessee by holding the gains on CCDs has to be treated as capital gains. CIT(A), thus following the decision of Hon'ble Delhi High Court decided the issue in favour of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

5. Before us, Learned DR supported the order of AO and further submitted that Revenue has filed SLP before the Hon'ble Apex Court which has been admitted on 19.11.2015 and the

matter is pending before the Hon'ble Apex Court. Learned AR on the other hand supported the order of CIT(A) and further submitted that on identical facts in assessee's own case for A.Y. 2013-14, the Co-ordinate Bench of Tribunal in ITA No.414/Del/2018 order dated 08.09.2021 has dismissed the appeal of the Revenue. She placing reliance on the aforesaid order submitted that following the Hon'ble ITAT order in assessee's own case for A.Y. 2013-14, the grounds of Revenue needs to be dismissed.

6. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the action of the AO in treating the gains on sale of CCDs to be taxable. It is an undisputed fact that identical issue arose in assessee's own case for A.Y. 2011-12 & 2012-13. For A.Y. 2011-12, the Hon'ble Delhi High Court vide order dated 30.07.2014 has held that the gain on CCDs to be treated as capital gains. We further find that the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2013-14 in ITA No.414/Del/2018 order dated 08.09.2021 by following the decision of Hon'ble Delhi High Court, dismissed the appeal of the Revenue. Before us, no distinguishing feature in the facts in the year under consideration and that of earlier years has been pointed out by the Revenue. Further no material has been placed by Revenue to demonstrate that the decision rendered by Hon'ble Delhi High Court in assessee's own case for A.Y. 2011-12 has

been stayed/ set aside/ overruled by higher judicial forum. Considering the totality of the aforesaid facts, we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 08.09.2021

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Date:- 08.09.2021

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Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI