

आयकर अपीलीय अधिकरण
मुंबई पीठ " ई", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " E ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं. 2642/मुं/ 2022 (नि.व. 2016-17)
ITA NO. 2642/MUM/2022(A.Y.2016-17)
&
SA NO.153/MUM/2022
(Arising out of ITA No.2642/Mum/2022,A.Y.2016-17)

Teleperformance BPO Holdings
Private Limited,
Teleperformance Towers, Plot CST No.1406,
A/28 Mindspace, Goregaon West,
Mumbai 400 104

PAN: AADCA-3802-E

..... अपीलार्थी /Appellant

बनाम Vs.

National Faceless Appeal Centre, Delhi.

Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri J.D.Mistry, Sr. Advocate with
Shri Madhur Agrawal

प्रतिवादी द्वारा/Respondent by : Shri Solgy Jose

सुनवाई की तिथि/ Date of hearing : 04/01/2023

घोषणा की तिथि/ Date of pronouncement : 24/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 26/09/2022 for the assessment year 2016-17.

2. Shri J.D.Mistry, Sr. Advocate appearing on behalf of the assessee narrating facts of the case submits that the assessee / appellant had made investment of Rs.309,25,64,760/- in equity shares of Teleperformance Global Services Pvt. Ltd. (formerly known as Intelnet Global Services Pvt. Ltd) (in short 'TGSPL'). During the period relevant to the assessment year under appeal, TGSPL carried out capital reduction. The scheme of reduction of share capital and share premium of TGSPL was approved by Hon'ble Bombay High Court vide order dated 01/07/2016. The copy of the order approving the scheme is at page 200 to 212 of the paper book. In the light of said capital reduction the assessee had written off investments costing Rs.309,24,63,225/- in the books of account as capital reduction by TGSPL. The said write off was reflected in the Profit & Loss Account for the year ended 31/03/2016 as exceptional item. A copy of Statement of Profit & Loss is at page 214 of the paper book. The same was added back by the assessee while computing its taxable income. The Id. Counsel for the assessee pointed that the statement of computation of taxable income at page 215 would show that the starting of the computation of total income is from Net profit as per P&L Account i.e. Rs.40,67,555/- (i.e. before the exceptional item). In the course of scrutiny assessment proceedings the Assessing Officer invoked provisions of section 60 of the Income Tax Act, 1961 [in short "the Act"] and made addition of Rs.496,25,40,000/- on account of write off of investment under the head 'Income from Other Sources'. The above addition resulted in Tax demand of Rs.228,44,52,663/- for the impugned assessment year. The Id. Counsel for the assessee submits that with reduction of share capital by TGSPL the assessee in fact has suffered loss, however, the same was not claimed in the return of income.

2.1 The Id. Counsel for the assessee assailing the addition made u/s. 60 of the Act submits that a bare perusal of the provisions of section 60 would show that the addition could be made under the said section only where **“any income has arisen to any other person”**. In the instant case there is no generation of income, in fact the reduction in share capital has resulted in capital loss to the assessee. TGSPL had issued Fully Convertible Debentures(FCDs) to Serco Netherlands BV in December, 2008 amounting to Rs.848,23,00,000/- i.e. 84,82,300 FCDs having face value of Rs.100/- each and Serco International SARL in November 2011 amounting to Rs.1918,23,32,920/- i.e. 191,82,33,292 FCDs having face value of Rs.10/- each. After reduction in share capital, TGSPL converted FCDs held by Serco International SARL into 7,09,45,945/- equity shares of Rs.10/- each, having a Fair Market Value(FMV) of Rs.148/- per share. The Assessing Officer applying FMV of the shares on the share written off by the assessee in TGSPL made addition of Rs.496,25,40,000/- . The Assessing Officer has erred in coming to the conclusion that reduction in share capital by TGSPL of the shares allotted to the assessee, has resulted in benefit to another group company Serco International SARL.

3. Aggrieved by the assessment order dated 27/12/2018 assessee carried the issue in appeal before the CIT(A). The CIT(A) without appreciating facts of the case upheld assessment order confirming addition under provisions of section 60 and 63(b) of the Act and dismissed the appeal of assessee. The Id. Counsel for the assessee submits that the transaction of reduction in share capital and conversion of FCDs into equity shares are two separate independent transaction. The Id. Counsel for the assessee reiterated that there is no generation of income in the transaction of reduction in share capital and conversion of FCDs into shares.

4. Per contra, Shri Solgy Jose representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submits that transaction /arrangement between the assessee and TGSPL is that of transfer of income without transfer of corresponding asset by the assessee and hence, chargeable to tax as income in the hands of the assessee being transferor of income, hence, the Assessing Officer rightly invoked the provisions of section 60 & 63(b) of the Act.

5. We have heard the submissions made by rival sides and have examined the orders of Authorities Below. In so far as the facts of the case are concerned there is no dispute. For determining whether provisions of section 60 & 63(b) of the Act would apply on the facts, it would be imperative to first examine the provisions of section. For the sake of completeness the relevant provisions are reproduced herein below:

Section 60:

“All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.”

Provisions of section 60 are contained in Chapter-V of the Act, which deals with **“Income of other persons, included in assessee’s total income.”** A bare perusal of section 60 would show that the section will come into operation if:

(i) There is generation of income;

(ii) such income is transferred by overriding title, by the owner of the asset yielding such income;

(iii) the owner keeps the title in the assets unto himself.

In such circumstances the income transferred arising out of the retained assets shall be chargeable to income tax as the income of the transferor. Section 63(b) defines the expression 'transfer', the same is reproduced below:

Section 63 :

“(b) “transfer” includes any settlement, trust, covenant, agreement or arrangement.”

In the instant case, for application of section 60, the first condition to be satisfied is generation of income. The Assessing Officer and the CIT(A) have invoked the provisions of section 60 while drawing nexus between two independent transaction i.e. reduction of share capital of TGSPL thereby wiping out the entire equity share holding into TGSPL and issue of equity shares by TGSPL by conversion of FCDs allotted to Serco International SARC. In the above two transactions, in our opinion there is no generation of income that could in any manner be transferred to any other person. Hence, application of section 60 of the Act in the present case fails at the first step itself. Even otherwise, reduction in share capital and share premium of TGSPL and conversion of FCDs into equity shares by TGSPL are two independent events. Undisputedly, with reduction in share capital and share premium the equity shares held by assessee in TGSPL have been wiped out. We fail to comprehend as to how said reduction in share capital and share premium results in transfer of profit by the assessee to Serco International SARL, to whom equity shares have been allotted after conversion of fully convertible Debentures. As is evident from records, FCDs were issued by TGSPL to Serco International SARL much prior to reduction in share capital. Since, there is no

generation of income there can be no question of transfer of income to any other person. The Assessing Officer and the CIT(A) have erred in invoking the provisions of section 60 of the Act for making addition of Rs.496,25,40,000/-. Consequently, the impugned order is liable to be set aside on this ground alone. We hold and direct accordingly. Ground No.3 of appeal is thus, allowed.

6. In ground No.4 of appeal, the assessee has raised an alternate contention to the primary contention raised in ground No.3 of the appeal. Since, we have allowed ground No.3 of appeal, ground No.4 has become infructuous.

7. In ground No.5 of the appeal the assessee has raised a fresh ground claiming capital loss while computing total income of the assessee /appellant. The Id. Counsel for the assessee on instructions from the assessee stated that he is not pressing this ground. In view of the statement made by Id. Counsel for the assessee ground No.5 is dismissed as not pressed.

8. In ground No.6 of appeal, the assessee has assailed levy of interest u/s. 234B of the Act . Charging of interest u/s. 234B is mandatory and consequential, hence, ground No.6 of appeal is dismissed.

9. In ground No.7 of appeal, the assessee has assailed initiation of penalty proceedings u/s. 271(1)(c) of the Act. Challenge to penalty proceedings at this stage is premature, hence, ground No.7 of the appeal is dismissed as such.

10. The grounds No.1,2 & 8 of appeal are general in nature, hence, require no separate adjudication.

11. In the result, appeal by the assessee is partly allowed in the terms aforesaid.

S.A.NO.153/MUM/2022:

12. The assessee has filed application seeking stay of outstanding demand for the assessment year 2016-17. Since, we have decided appeal of the assessee, the Stay Application has become infructuous and the same is dismissed as having become infructuous.

13. To sum up, the appeal filed by the assessee is partly allowed and stay application filed by the assessee is dismissed.

Order pronounced in the open court on Tuesday the 24th day of January, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 24
/01/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai