

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

**Before Sh. C. N. Prasad, Judicial Member**

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

**ITA No. 1937/Del/2023 : Asstt. Year: 2017-18**

DCIT, Circle-1(1)(2), Intl. Taxation, New Delhi-110002	Vs	Battery Ventures VII (Mauritius), Twenty Eight IFS Court, Bank Street, Cybercity, EBENE, Mauritius
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AADCB0695G</b>		

**Assessee by : Dr. Shashwat Bajpai, Adv. &  
Sh. Mahir Khanna, Adv.**

**Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

**Date of Hearing: 26.12.2023**

**Date of Pronouncement: 28.12.2023**

**ORDER**

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

The present appeal has been filed by the Revenue against the order dated 28.02.2020 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the Revenue:

*"(i) Whether on the facts and circumstances of the case and in law, Id. CIT(A) erred in holding that assessee has under reported the sale consideration on account of sale of capital asset.*

*"(ii) The Id. CIT(A) has failed to appreciate that assessee has under reported and misreported the income amounting to Rs.24,08,80,362/- on account of transfer of capital assets and the penalty proceedings has to be levied on the assessee."*

3. Heard the arguments of both the parties and perused the material available on record.

4. The assessee is a limited liability company incorporated in Mauritius and it had submitted the copy of the tax residency certificates issued by the Mauritius Tax Authorities for the relevant period during the course of the assessment proceedings. As per paragraph 4 of Article 13 of the DTAA between India and Mauritius applicable to the FY 2016-17, any Mauritius resident deriving any income by way of gains from transfer of shares of Indian companies should be liable to capital gains tax only in Mauritius and not in India.

5. It is therefore, held that the assessee is entitled to the benefits of the DTAA between India and Mauritius, and thus being a Mauritius resident deriving income by way of gains from transfer of shares of Indian companies, it is liable to capital gains tax only in Mauritius and not in India as per paragraph 4 of Article 13 of the DTAA between India and Mauritius. It is also a fact on record that the AO both in the assessment order as well as remand report, has accepted that the assessee is entitled to the benefits of the India-Mauritius tax treaty and the capital gains is taxable in Mauritius.

6. Keeping in view the facts on record and the order of the Id. CIT(A), we hold that the appeal of the Revenue is liable to be dismissed summarily.

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

Order Pronounced in the Open Court on 28/12/2023.

Sd/-

**(C. N. Prasad)**  
**Judicial Member**

Sd/-

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

**Dated: 28/12/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**