

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 2458/Mum/2024  
Assessment Year 2016-17

Caledonia Investments PLC, Cayzer House, 30 Buckingham Gate, London, SW1E 6NN, United Kingdom PAN : AACCC4471A	vs.	Assistant Commissioner of Income Tax (International Taxation), Circle-2(1)(1), Air India Building, Nariman Point, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Madhur Agarwal & Shri Harsh R. Shah,
For Revenue :	Ms. Madhu Malati Ghosh, CIT-DR

Date of Hearing :	07-08-2024
Date of Pronouncement :	08-08-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dated 18-03-2024 passed by the Ld.Addl/JCIT(A)-4, Kolkata (in short 'Ld.CIT(A)') and it relates to AY. 2016-17.

2. The only issue urged in this appeal is related to the demand raised by the AO u/s. 201 of the Income Tax Act, 1961 ('the Act'), treating the assessee as 'assessee in default' for not deducting tax at source u/s. 195 of the Act in respect of certain remittances made by the assessee to its foreign bank account.

3. Ld.AR submitted that the assessee is a company, incorporated in and tax resident of the United Kingdom. It is registered with SEBI in India as Foreign Institutional Investor and now classified as Foreign Portfolio Investor. The assessee sold equity shares held by it in Dewan Housing Finance Corporation Limited and Varun Shipping Company Limited and earned Long Term Capital Gain thereon. The assessee claimed the said Long Term Capital Gain as exempt u/s. 10(38) of the Act.

4. Subsequently, the assessee remitted the surplus funds of Rs.154.35 crores from its bank account held in India to its bank account located in United Kingdom on 13-01-2015. The AO took the view that the assessee should have deducted tax at source u/s. 195 of the Act from the above said remittances. Since the assessee did not deduct tax at source, he treated the assessee as an 'assessee in default' and raised a tax demand of Rs. 65.50 crores, u/s. 201(1) of the Act and interest demand of Rs. 39.95 crores u/s.201(1A) of the Act, both aggregating to Rs. 159.65 crores.

5. There is some confusion about the assessment year. We noticed that the remittance was made by the assessee on 13-01-2015. Hence the AO initially initiated proceedings u/s 201 of the Act in January, 2018 for assessment year 2015-16. According to the assessee, it filed replies and thereafter nothing was received from the AO. Subsequently, the AO again initiated proceedings u/s 201 of the Act for AY 2016-17 for the very same remittance made on 13.01.2015. The assessee filed appeal before Ld CIT(A) mentioning the year as financial year 2015-16. The Ld CIT(A) took the view that the assessee has filed appeal for assessment year 2015-16 against the order passed for AY 2016-17. Accordingly, he dismissed the appeal of the assessee. Hence the assessee filed this appeal before the Tribunal.

6. We heard the parties and perused the record. We noticed that the assessee has not remitted the above said amount to any other person.

It has transferred the above said amount from its bank account maintained in India to its own bank account located in United Kingdom i.e., it is a case of transfer of funds by the assessee to itself. The provisions of section 195 of the Act shall come into operation only if a person is making payment to any other person of any sum chargeable under the provisions of the Act. It is not the case of the AO that the remittance made by the assessee from its Indian bank account to its foreign bank account is chargeable under the provisions of the Act. Hence the provisions of section 195 of the Act will not be applicable to the impugned remittance made by the assessee to its foreign bank account. Hence, the assessee cannot be treated as 'assessee in default' in terms of sec.201 of the Act in respect of the above said remittance.

7. Since the transaction of transfer of funds is not liable to tax, the question of assessment year dealt with by Ld.CIT(A) also loses significance.

8. In view of the above, we hold that the tax authorities are not justified in raising the impugned demand upon the assessee. Accordingly, we quash the orders passed by the tax authorities and allow the grounds raised by the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 8<sup>th</sup> August, 2024.

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 08-08-2024

TNMM

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1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "C" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,  
ITAT, Mumbai