

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 723/Mds/2016

निर्धारण वर्ष / Assessment Year : 2007-08

M/s Visteon Asia Holdings Inc.

One Village Centre Drive,
Van Buren Township,
Michigan, USA – 48111.

C/o Deloitte Haskins & Sells LLP,
7th floor, ASV 'N' Ramana Towers,
No.52, Venkatnarayana Road,
T. Nagar, Chennai - 600 017.

v. The Deputy Commissioner of
Income Tax,
International Taxation – II(1),
Nungambakkam,
Chennai - 600 034.

PAN : AACCV 5647 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. Milind Madhukar Bhusari, CIT

सुनवाई की तारीख/Date of Hearing : 07.06.2016

घोषणा की तारीख/Date of Pronouncement : 24.08.2016

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 16, Chennai, dated 28.01.2016 and pertains to assessment year 2007-08.

2. The first issue arises for consideration is valuation of shares held in Visteon Powertrain Control Systems India Pvt. Ltd.

3. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that for the purpose of transfer of shares held by the assessee in Visteon Powertrain Control Systems India Pvt. Ltd., the assessee valued the same at ₹10.32 per share. However, the Assessing Officer estimated the valuation at ₹36.31 per share. Referring to the order of this Tribunal dated 12.11.2013 in I.T.A. No.17(Mds)/2012 in M/s VIHI, LLC, the Ld.counsel submitted that VIHI is also one of the co-transferors. In that case, the Tribunal accepted the valuation made by the assessee at ₹10.32 per share. Therefore, the CIT(Appeals) ought to have followed the order of this Tribunal in VIHI, LLC (supra).

4. The Ld.counsel for the assessee further submitted that the Transfer Pricing Officer by order dated 29.10.2010 in M/s Visteon International Holdings Inc, held that the Assessing Officer himself has taken the value of share as determined by the TPO in the case of Visteon Powertrain Control Systems India Pvt. Ltd., while computing the long term capital gains. Therefore, according to the

Ld. counsel, the CIT(Appeals) ought to have followed the order of this Tribunal in I.T.A. No.17/Mds/2012 dated 12.11.2013.

5. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that the assessee-company is incorporated in USA. Visteon Powertrain Control Systems India Pvt. Ltd. is a company incorporated in India and engaged in the business of manufacturing auto components. During the year under consideration, the assessee-company sold 7366765 equity shares of face value of ₹10/- to Visteon International Holdings Mauritius Ltd. at ₹10.32 per share. According to the Ld. D.R., the Indian company, namely, Visteon Powertrain Control Systems India Pvt. Ltd. changed the shareholding patten by letter dated 26.04.2007. The assessee claimed before the Assessing Officer that the shares were valued as per the certificate of independent Chartered Accountant as per the guidelines issued by Controller of Capital Issues. According to the Ld. D.R., since there was transaction of sale of shares between the assessee-company and Visteon International Holdings Mauritius Ltd., the Assessing Officer found that the transaction has to be made only at arm's length price. The Transfer Pricing Officer, by adopting cash

discount method of valuation, had determined the value of 7366765 shares of Visteon Powertrain Control Systems India Pvt. Ltd. at ₹81,15,78,422/-. In other words, the Transfer Pricing Officer determined the value of shares by following the cash discount method at ₹36.31 per share. According to the Ld. D.R., the average value of share, as per Chartered Accountant's valuation was ₹22.50 per share as on 31.03.2007. Despite this valuation, according to the Ld. D.R., the assessee disclosed the sale at ₹10.32 per share. According to the Ld. D.R., this is underestimation of sale consideration.

6. According to the Ld. D.R., the sale of shares by the assessee resulted in capital gain, therefore, the assessee is liable to pay the capital gain tax. Accordingly, the Assessing Officer has rightly levied the capital gain.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee-company incorporated in USA, was holding 9% of shares in Visteon Powertrain Control Systems India Pvt. Ltd. The assessee sold 73,66,765 equity shares at face value of ₹10/- to M/s Visteon International Holdings Mauritius Ltd. at ₹10.32 per share. Since the

shares were sold to the subsidiary company of the assessee, the Assessing Officer found that the transaction was between Associate Enterprises and hence the sale proceeds has to be determined by ascertaining the arm's length price. The Assessing Officer found that the average value of shares was considered at ₹22.50 per share as on 31.03.2007 by the Chartered Accountant. The assessee, however, claims that the valuation was made by independent Chartered Accountant in accordance with the guidelines issued by Controller of Capital Issues at ₹10.32 per share. The main contention of the assessee before this Tribunal is that the issue of valuation of share of Visteon Powertrain Control Systems India Pvt. Ltd. was considered by this Tribunal in I.T.A. No. 17/Mds/2012 dated 12.11.2013.

8. We have carefully gone through the order of this Tribunal for the assessment year 2007-08 in VIHI, LLC in I.T.A. No.17/Mds/2012. In the case before this Tribunal, the assessee, VIHI transferred the shares of Visteon Powertrain Control Systems India Pvt. Ltd. to M/s Visteon International Holdings Singapore Pte Ltd. and to M/s Visteon International Holdings Mauritius Ltd. for ₹10.32 per share. The assessee has obtained valuation certificate

from M/s Delloite Haskins & Sells, Chartered Accountants. However, the Assessing Officer determined the arm's length price of the value of shares at ₹36.31 per share. This Tribunal after examining the facts of the case, ultimately found that the computation of arm's length price shall be made in DCF method.

9. In fact, the order of this Tribunal in I.T.A. No.17/Mds/2012 relates to assessment year 2007-08. The issue under consideration is for assessment year 2013-14. The CIT(Appeals) found that the capital gain cannot be determined on the basis of sale price admitted by the assessee in the return of income. The valuation of share at the initial stage was made on Net Asset Value method and Profit Earning Capacity Value method. The average value of shares was arrived at ₹20.50 per share as on 31.03.2007, which is proximate to the date of first sale, i.e. 27.03.2007. However, the assessee claims that the sale was at ₹10.32 per share. When the Chartered Accountant found that the value was ₹20.50 per share as on 31.03.2007, the valuation adopted by the assessee at ₹10.32 per share is not justified. In fact, the CIT(Appeals) found that at the initial stage, the share was valued at Net Asset Value method and Profit Earning Capacity Value method. Ultimately, the share was

valued at DCF method. When the Assessing Officer valued the shares by following DCF method, this Tribunal is of the considered opinion that the assessee cannot have any grievance at all.

10. Even for assessment year 2007-08, this Tribunal accepted the valuation made by the assessee under DCF method. The valuation made for assessment year 2007-08 in respect of VIHI cannot be adopted for the assessment year 2013-14 when the assessee transferred the same. Due to time gap, the fluctuation in the market rate and value of capital asset of the company have to be taken into consideration for the purpose of valuing the shares under DCF method. Therefore, the valuation made for the assessment year 2007-08 cannot be the same for assessment year 2013-14. Since the Assessing Officer has followed DCF method, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the order of the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. The assessee has also raised an issue with regard to reopening of assessment.

12. As seen from the grounds of appeal, the grievance of the assessee appears to be that no original assessment was made, therefore, the assessment cannot be reopened. This Tribunal is of the considered opinion that even though no original assessment was made, for the purpose of assessing the taxable income, the Assessing Officer can always reopen the assessment under Section 147 of the Act. Therefore, merely because no assessment was made originally that cannot be a reason to find fault with the Assessing Officer for reopening the assessment.

13. The next ground of appeal is with regard to levy of interest under Section 234A of the Act.

14. We heard Ld.counsel for the assessee and the Ld. Departmental Representative. The only objection of the assessee appears to be that the return of income was filed within the time limit provided under Section 139(1) of the Act, therefore, there cannot be any levy of interest under Section 234A of the Act. We have carefully gone through the provisions of Section 234A of the Act. When the return of income was filed after the due date prescribed under Section 139(1) or 139(4) of the Act or due date prescribed in the notice under Section 142 of the Act, a simple interest at the rate

of one per cent is levied for every month or part of the month comprised in the period commencing on the date immediately following the due date on the amount of the tax on the total income as determined under sub-section (1) of Section 143 of the Act and where a regular assessment is made and the total income determined under regular assessment as reduced by the tax paid by the assessee either as advance tax or otherwise. Since the exact date of filing of return of income is not available on record, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer for ascertaining the exact date on which the return of income was filed. Accordingly, the issue of levy of interest under Section 234A of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall find out the exact date of filing of return of income by the assessee and thereafter decide the issue in accordance with law after giving a reasonable opportunity to the assessee.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 24th August, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 24th August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-16, Chennai
4. आयकर आयुक्त/CIT (IT), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.