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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 201/2022**

**THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION 3**

..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsel.

versus

ZAHEER MAURITIOUS

..... Respondent

Through: Ms.Ananya Kapoor, Advocate.

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Date of Decision: 18th July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. At the outset, learned counsel for the appellant prays that paragraph 2.3 of the present appeal be deleted. Accordingly, the said paragraph 2.3 is deleted.
2. It is pertinent to mention that the present appeal has been filed challenging the Order dated 1st November, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.2561/Del/2016 for the Assessment Year 2011-12.
3. Learned Counsel for the Appellant states that the ITAT 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 gain and not in the nature of interest income. He further states that the ITAT has erred in holding that the gains arising to the Assessee on the transfer of CCDs to M/s Vatika Ltd. is in the nature of capital gains and shall not be taxable in India under Article 11 of DTAA between India and Mauritius.

4. Both the CIT(A) and the ITAT have held in favour of the assessee holding that that the present case is covered by the decision of this Court dated 30th July, 2014 in assessee's own case. The assessment order in the present case was passed on 9th April, 2014 in pursuance of the decision dated 21st March, 2012 of the Authority of Advance Ruling ('AAR'). Assessee preferred a writ petition against the said order of the AAR, which was disposed of by this Court in favour of the assessee vide order dated 30th July, 2014 in WP(C) 1648/2013 with the following observations:

"15. Under normal circumstances, it is undeniable that gains arising from transfer of a debenture, which is a capital asset in the hands of the transferor, in favour of a third party, would be capital gains and not interest. In other words, if a debenture (which is a capital asset) is transferred by a holder to a third party, the gains that arise i.e. difference between the costs of purchase and the sale consideration would be capital gains in the hands of a transferor. The dispute in the present case arises only because it has been held that the transaction between the petitioner and the Vatika is a sham transaction and is essentially a transaction of loan to Vatika which has been camouflaged as an investment in shares and CCDs of the JV company.

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31. Thus, in terms of the policy of the Government, the petitioner could invest in a project of the requisite size/nature and an investment into CCDs would be reckoned as equity. The policy with regard to external commercial borrowings had other conditions and it is apparent that the petitioner



found the investment in CCDs as the most appropriate route for making its investment in real estate, in accordance with the policy of the Government of India. In these circumstances, it ought not to be readily inferred that the entire structure of the transaction was designed solely for the purposes of avoiding tax.”

5. Though the said judgment has been challenged before the Supreme Court by way of a Civil Appeal No.10299/2016, yet there is no stay of the said judgment. Accordingly, the present appeal is dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in Civil Appeal No.10299/2016.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 18, 2022

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