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

% **Decision delivered on: 30.05.2023**

+ **W.P.(C) 7622/2023 & CM Nos.29564-65/2023**

VODAFONE MAURITIUS LIMITED Petitioner

Through: Ms. Fereshte D. Sethna, Mr.
Mrunal Parekh and Ms. Disha
Jham, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX CIRCLE
INTERNATIONAL TAX 3 (1) (1), DELHI & ANR.

..... Respondents

Through: Mr. Puneet Rai, Sr Standing
Counsel with Mr. Ashvini
Kumar and Ms. Madhavi
Shukla, Standing Counsels
along with Mr. Nikhil Jain,
Advocate for Income Tax.
Mr. Ravi Prakash, (CGSC), Mr.
Farman Ali, Mr. Aman
Rewaria, Ms. Astu Khandelwal,
Ms. Usha Jamnal and Mr.
Yasharth Shukla, Advocates for
R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.29565/2023

1. Allowed, subject to just exceptions.

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behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Puneet Rai, learned senior standing counsel accepts notice on behalf of the respondents/revenue.

3. Given the direction(s) that we propose to issue, Mr Rai says that he does not wish to file a counter-affidavit, and that he will argue the matter based on the record presently available with the Court.

3.1 Therefore, with the consent of learned counsel for the parties, the matter is taken up for hearing and final disposal at this stage itself.

4. This is the second round of litigation for the petitioner. In the earlier round, the petitioner had filed a writ action i.e., W.P.(C)No.12600/2022, whereby challenge was laid to the order dated 28.07.2022 as well as the consequent notice dated 29.07.2022.

5. In a nutshell, the petitioner had approached this Court on the earlier occasion, as the Assessing Officer (AO) had passed the order and notice impugned in the said writ action, without regard to the Tax Residency Certificate (TRC) issued in its favour. The transaction that the AO has sought to bring under the purview of the Income Tax Act, 1961 [in short, "Act"] concerns the sale of shares by the petitioner of an Indian company, going by the name Bharti Infotel Pvt. Ltd.

6. The petitioner has sold these shares to an entity, namely, Bharti Enterprises (Holding) Pvt. Ltd. Concededly, the transaction took place in Financial Year (FY) 2015-16 [relatable to AY 2016-2017].

7. The petitioner sold the said shares for Rs.1,295 crores. Admittedly, the consideration was paid to the petitioner, without deduction of tax at source.

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8. It is also not in dispute, that the petitioner had not filed a return of income qua the period in issue. However, as in the earlier round, as well as in the present writ action, the petitioner takes the stand, that since it has been issued a TRC under the laws of Mauritius, it is entitled to take benefit of the provisions of Article 13 of the India-Mauritius Double Taxation Avoidance Agreement [“DTAA”] obtaining between India and Mauritius.

9. It was pointed out by Ms. Fereshte D. Sethna, who appears on behalf of the petitioner [as was the case in first round], that the petitioner had, in fact, registered a loss concerning the said transaction amounting to Rs.28,73,49,89,247/-.

10. It is in these circumstances, based on the stand taken by counsel for the parties, that via the judgment dated 08.12.2022, we had set aside the order and notice, which was subject matter of the challenge in the first round, and remitted the matter to the AO.

11. More particularly, *via* judgment dated 08.12.2022, we had called upon the AO to examine, as to whether she had jurisdiction in the matter, having regard to the objections raised by the petitioner in the writ petition.

11.1 The directions that we issued are contained in paragraph 11 of the judgment dated 08.12.2022.

12. It is pursuant to the said judgment dated 08.12.2022, that the impugned order dated 04.05.2023 has been passed by the AO.

13. The AO *via* the said order has, inter alia, made the following observations, which, in a sense, gives a clue as to the rationale employed by her in reaching her conclusion in the matter



“3.2 Hence, if the intent of the assessee is to indulge in tax evasion through various means like treaty shopping etc., it can not be allowed benefits of treaty. Hence, mere TRC is not the absolute proof of 'residential status' of an assessee. Further, at this stage of assessment proceedings, the office of the undersigned can not conduct enquiry regarding commercial and economic substance of the assessee as the Hon'ble High Court has directed to pass speaking order on jurisdictional issues raised by assessee before initiating any enquiry during assessment proceedings.”

13.1. Based on this rationale, the AO ruled, that the TRC issued to the petitioner was not conclusive evidence, which would establish its residential status, consequently making the petitioner eligible for treaty benefits.

14. In sum, the AO repelled the petitioner's contention, that she did not have jurisdiction to proceed further in the matter.

15. We may note, something which Mr Rai cannot but accept, that nothing in the form of information or material has been put to the petitioner, which would persuade us to conclude that the TRC issued to the petitioner was a not viable document in law.

16. The observations made in paragraph 3.2, to say the least are, if at all, tentative. The AO has attributed an intent to the assessee- which is that it would indulge in tax evasion *inter alia*, by treaty shopping, without any material or information of such kind being put to it.

17. We are of the view, that unless relevant information, if any, which is available with the AO, is put to the petitioner, which leads to a conclusion that the TRC obtained by the petitioner is not legally valid and/or viable, the impugned order passed by the AO cannot be sustained.

17.1 Therefore, without expressing any final view in the matter, in
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our opinion, the best way forward would be to set aside the order, and direct the AO to confront the petitioner with material or information, which according to her, would have her arrive at a conclusion that the TRC on which the petitioner seeks to place reliance deserves to be rejected.

18. Mr Rai says, that the AO, who has called for the relevant information, will furnish the same to the petitioner, as soon as the same is made available.

19. Having regard to the statement made by Mr Rai, as indicated above, we are inclined to set aside the impugned order dated 04.05.2023.

20. It is ordered accordingly.

21. Liberty is, however, given to the AO, to take next steps in the matter, *albeit*, in accordance with the law, with the caveat that the necessary information would be supplied to the petitioner, before the AO embarks on this route.

22. Consequently, the impugned notices dated 08.05.2023 and 16.05.2023 will collapse.

23. The writ petition is disposed of in the aforesaid terms.

24. Pending application shall also stand closed.

25. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 30, 2023/MR

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