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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3321/2024 & CM APPL. 13731/2024 (Stay)
LINXON PVT LTD. Petitioner

Through: Mr. Ananya Kapoor, Mr. Vibhu
Jain and Mr. Amandeep Mehta
and Mr. Shivam Yadav, Advs.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE
INT. TAX. 2(2)(1) Respondent

Through: Mr. Ruchir Bhatia, Sr. SC
alongwith Ms. Deeksha Gupta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINdra KUMAR
KAURAV

ORDER

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09.04.2024

1. This writ petition impugns the initiation of action under Section 148 of the Income Tax Act, 1961 ["Act"]. We had in terms of our order of 05 March 2024 succinctly noticed the challenge which stood raised. Before us today, it could not be disputed that the subscription of shares in an Indian entity would constitute a transaction on the capital account and thus not fall within the ambit of Section 148. The view as expressed above finds resonance in the decision rendered by the Court in **Angelantoni Test Technologies SRL vs. Assistant Commissioner of Income Tax** [2023 SCC OnLine Del 8486] where while dealing with an identical question, we had observed as follows:-

"6. It is settled law that investment in shares in an Indian subsidiary cannot be treated as 'income' as the same is in the nature of "capital account transaction" not giving rise to any income. In Nestle SA Versus Assistant Commissioner of Income Tax (W.P.(C) No. 12643/2018), this Court held that the allegation of the Revenue that the investment in the shares of Indian subsidiary amounted to income' is flawed. The relevant portion of the said judgment is reproduced hereinunder:



“24. The principal objection of the Petitioner that its investment in the shares of its subsidiary cannot be treated as ‘income’ is well founded. The decision of the Bombay High Court in **Vodafone India Services Pvt. Ltd. v. Union of India** (supra) holding such investment in shares to be a ‘capital account transaction’ not giving rise to income was accepted by the CBDT. Para 2 of Instruction No.2 of 2015 dated 29th January, 2015 reads thus:

“2. It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that the ratio decidendi of the judgment must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPs and CIT(Appeals).”

25. Therefore, the fundamental premise of the Respondent that the above investment by the Petitioner in the shares of its subsidiary amounted to ‘income’ which had escaped assessment was flawed. The question of such a transaction forming a live link for reasons to believe that income had escaped assessment is entirely without basis and is rejected as such.”

2. Following the aforesaid, we find ourselves unable to sustain the impugned notices dated 27 February 2023 and 25 March 2023 issued under Section 148A(b) and 148 respectively and the impugned order dated 25 March 2023 issued under Section 148A(d) of the Act.

3. The writ petition is accordingly allowed. Consequently, the aforesaid impugned notices and the impugned order are hereby quashed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 9, 2024/p