$~96

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

\+ W.P.(C) 5992/2024

AB 4 BV ..... Petitioner

Through: Mr. Sachit Jolly with Mr. Aditya Rathore, Mr. Abhyudaya Shankar Bajpai, Advs.

versus

DEPUTY ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1 1 1 INTERNATIONAL TAXATION DELHI & ANR. ..... Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashwini Kumar, Mr. Rishabh Nangia, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **29.04.2024**

CM APPL. 24876/2024(Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5992/2024 & CM APPL. 24875/2024 (Stay)

1. The instant writ petition impugns the order dated 31 March 2024 pursuant to which a penalty amounting to INR 32,83,95,730/- has come to be imposed upon the petitioner in respect of Assessment Year [**'AY'**] 2020-21 with the respondents invoking the provisions of Section 270A(8) read with Section 270A(9)(a) of the Income Tax Act, 1961 [**'Act'**].

2. From the undisputed facts which emerge from the record, we find that for AY 2020-21 the petitioner had filed its Return of Income which included interest on Non-Convertible Debentures [**'NCD'**]

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 07/05/2024 at 11:33:20

issued by its group entity Home Credit Finance Private Limited taxable @5% under Section 194LD of the Act as well as interest on External Commercial Borrowings ['**ECB**'] taxable @10% as per the Double Taxation Avoidance Agreement between India and Netherlands [**'DTAA'**].

3. On 29 September 2022, a draft assessment order in terms of Section 144C of the Act came to be framed by respondent no. 1 which held that the petitioner was not eligible to claim the benefits of Section 194LD of the Act. The petitioner filed detailed objections on 21 October 2022 before the Dispute Resolution Panel [**'DRP'**]. On due consideration of the issues which stood raised, the DRP vide its directions dated 12 May 2023 remitted the matter to the Assessing Officer [**'AO'**] requiring it to examine the contention of the petitioner, bearing in mind the letter dated 30 November 2017 as penned by the Principal Chief Commissioner of Income Tax, International Taxation, New Delhi. ['**PCCIT**']

4. It becomes pertinent to note that the PCCIT in terms of the aforenoted communication of 30 November 2017 had clarified that bearing in mind the provisions enshrined in Section 194LD of the Act, there would exist no justification to construe a distinction existing between debentures and bonds. It was further opined that the primary condition required to be satisfied is that the debt should be rupee dominated, must have been issued by an Indian company to a specified foreign investor and interest thereon payable in accordance with the aforenoted Section.

5. The PCCIT also took into consideration the relevant provisions of the Companies Act, 2013 as well as the Regulations framed by Securities and Exchange Board of India to ultimately come to hold

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 07/05/2024 at 11:33:20

that the term ‘bonds’ as appearing in Section 194LD of the Act should be considered as including NCD.

6. Pursuant to the directions framed by the DRP, respondent no.1 on 28 June 2023 passed an assessment order accepting the Return of Income as submitted by the petitioner and extending the benefit of Section 194LD of the Act. The notice of demand under Section 156 of the Act further certified that no additional sums were liable to be paid by the petitioner.

7. However on 16 January 2024, the respondent proceeded to issue a notice calling upon the petitioner to show cause why penalty should not be imposed under Section 270A of the Act. The petitioner submitted its reply on 23 January 2024 whereafter the impugned order of 31 March 2024 came to be passed.

8. The fact that the Return of Income was ultimately accepted and benefits under Section 194LD of the Act extended to the petitioner could not be disputed by Mr. Rai, learned counsel appearing for the respondents.

9. That only leaves us to consider the question whether penalty could have been imposed at all in terms of Section 270A of the Act. As is evident from a reading of sub-section (8) thereof, penalty would have been justified provided the assessee could be held to be guilty of having under-reported income or the under-reporting being in consequence to a mis-reporting of income. However, and as the recordal of facts would establish, the petitioner could neither be said to be guilty of mis-reporting or under-reporting of income. In that view of the matter, the imposition of penalty would clearly not sustain.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 07/05/2024 at 11:33:20

10. We, accordingly, and for reasons recorded hereinabove, allow the instant writ petition and quash the impugned order under Section 270A of the Act dated 31 March 2024 along with notice of demand under Section 156 of the Act dated 31 March 2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 29, 2024
RW

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 07/05/2024 at 11:33:20