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

\+ W.P.(C) 9279/2023 & CM APPL. 35329/2023

BACARDI MARTINI BV ..... Petitioner

Through: Mr.Ajay Vohra, Sr.Adv with Mr.Aditya Vohra, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Ruchir Bhatia, Sr.SC with Ms.Deeksha Gupta, Adv.

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

O R D E R

% **08.04.2024**

1. Although we had granted time to Mr. Bhatia, learned counsel representing the respondent to file a counter affidavit, we note that the challenge which stands raised before us is no longer res integra in light of the judgment rendered by this Court in **Angelantoni Test Technologies SRL vs Assistant Commissioner of Income Tax, Circle Int Tax 1(1)(1) & Ors.** [2023 SCC OnLine Del 8486].

2. The record would reflect that the Section 148A of the Income Tax Act, 1961 ["**Act**"] proceedings pertain to certain investments made by the petitioner, a non-resident company in its Indian subsidiary. The subscription of share capital in the Indian subsidiary would undoubtedly be a “capital account transaction”.

3. It is in the aforesaid context that it is contended that the

initiation of action under Section 148 of the Act would not sustain.

4. We note that while dealing with an identical question, we had in *Angelantoni Test Technologies*, held 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:
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> > "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:
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> > > "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)."
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> > 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."

5. Following the aforesaid, we find ourselves unable to sustain the impugned notices dated 04 March 2023 and 16 April 2023 issued under Sections 148A(b) and 148 respectively and the impugned order dated 15 April 2023 issued under Section 148A(d) of the Act. The

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

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 08, 2024/MJ