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

\+ W.P.(C) 9308/2023 & CM APPL. 35444/2023

TELENOR SOUTH ASIA INVESTMENT PTE LTD ..... Petitioner

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

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Aseem Chawla, Sr.SC with Ms.Pratishtha Chaudhary, Mr.Naveen Rohila and Mr.Aditya 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. We have heard Mr. Vohra, learned senior counsel appearing in support of the writ petition and Mr. Chawla, learned counsel who represents the respondent.

2. The facts which form subject matter of the instant challenge were succinctly noticed in our order of 14 July 2023 and which is reproduced hereinbelow:-

> "**CM APPL. 35445/2023**
> 1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.
> **W.P.(C) 9308/2023 and CM APPL. 35444/2023 [Application filed on behalf of the petitioner seeking interim relief]**
> 2. This writ petition concerns Assessment Year (AY) 2019-20.
> 3. The principal allegation against the petitioner is, that the source of funds with regard to the investment made in an entity i.e., Telenor India) Communications Pvt. Ltd. [in short, "Telenor India"] is not explained.

4. It is not in dispute, that the petitioner-company, which is a resident of Singapore has invested 1466 crores in the equity shares of Telenor India. Based on this allegation, a notice dated 27.03.2023 under Section 148A(b) of the Income Tax Act, 1961 [in short, "the Act"] was served on the petitioner. In response thereto, the petitioner filed a reply dated 24.04.2023. The petitioner placed before the Assessing Officer (AO), the following documents, with regard to the investment made:

(i) Foreign Inward remittance certificate of INR 1466 crores (FIRC copy from bank evidencing equity infusion/share capital).

(ii) Audited financial statement of Telenor India;

(iii) Letter from Department of Telecommunications Government of India for the merger dues.

5. Apparently, the AO was not convinced, and accordingly proceeded to pass an order dated 01.05.2023 under Section 148A(d) of the Act.

6. Mr Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner, says that the impugned order is flawed for several reasons, including the following:

(i) Investment in equity shares can never lead to escapement of income, unless the AO had relevant material/information before him to disclose that it was a case of round-tripping.

(ii) The AO has not given weight to two vital documents filed by the petitioner i.e., Foreign Inward Remittance Certificate, and the communication received from the Department of Telecommunications, Government of India.

7. According to us, the matter requires further examination.

8. Issue notice.

8.1 Mr Aseem Chawla, learned senior standing counsel accepts notice on behalf of the respondent/revenue.

9. Counter-affidavit will be filed within the next six weeks.

9.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

10. List the matter on 04.12.2023.

11. In the meanwhile, there shall be a stay on the operation of the impugned notices and order till further directions of the Court.

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

3. Since and undisputedly the solitary ground on which Section 148 of the Income Tax Act, 1961 ["**Act**"] is sought to be invoked pertains to the investment of INR 1466 crores in the equity shares of Telenor India, an Indian subsidiary of the writ petitioner, it would undoubtedly be a "capital account" transaction 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].

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. In view of the aforesaid, we find ourselves unable to sustain the impugned notices dated 27 March 2023 and 01 May 2023 issued

under Sections 148A(b) and 148 of the Act respectively and the impugned order dated 01 May 2023 issued under Section 148A(b) of the Act.

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

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 08, 2024/MJ