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

\+ W.P.(C) 13377/2023 and CM APPL. 52800/2023 (Interim Relief)

M/S EBIX ASIA HOLDINGS INC. .....Petitioner

Through: Mr. Sachit Jolly, Sr. Adv. with Mr. Runjhun Pare, Mr. Abhyudaya Shankar Bajpai, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE INTERNATIONAL TAXATION (1)(2)(2) NEW DELHI .....Respondent

Through: Mr. Sunil Agarwal, Sr. SC with Mr. Shivansh B. Pandya, Jr. SC, Mr. Viplav Acharya, Jr. SC, Ms. Priya Sarkar, Jr. SC and Mr. Utkarsh Tiwari, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **13.12.2024**

1. The writ petitioner has approached this Court seeking the following reliefs: -

> "a. That this Hon'ble Court be pleased to issue a Writ of certiorari, or any other appropriate Writ, Order, or direction, quashing the Impugned Order dated ANNEXURE P1 Pg. Nos. 46-53) by the Respondent;
>
> b. That this Hon'ble Court be pleased to issue a Writ of certiorari, or any other appropriate Writ, Order, or direction, quashing the Impugned Notice dated 30.08.2023 (ANNEXURE P2 at Pg. 54-55) issued by the Respondent;

c. That this Hon'ble Court be pleased to issue a Writ of mandamus, or any other appropriate Writ, Order or direction to the Respondents directing to drop the proceedings initiated under Section 148A and 148 of the Act against the Petitioner;

d. For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. The challenge essentially is to the initiation of the reassessment action and which stands embodied in the order under Section 148A(d) of the **Income Tax Act, 1961**[1] dated 30 August 2023 and the issuance of a consequential notice under Section 148 of the Act, bearing the same date. For the purpose of examining the challenge which stands raised, we take note of the following essential facts.

3. The petitioner was incorporated in Mauritius and is a tax resident of that country. It had in **Assessment Year**[2] 2019-2020 invested in India and acquired Compulsory Convertible Debentures. On 14 March 2023, a notice under Section 148A(b) came to be issued alleging that various transactions pertaining to the purchase of debentures and amounting to INR 29,86,68,77,355/- in AY 2019-2020 had not been disclosed and no Return of Income submitted.

4. The petitioner filed its reply on 29 March 2023, submitting that the investments made in debentures qualify as "investment" and thus cannot be considered as "income". It would be apposite to also note that an order under Section 148A(d) had originally come to be passed on 15 April 2023. The petitioner had assailed the first round of proceedings of reassessment by way of W.P.(C) No. 7861/2023 before this Court. The said writ petition came to be disposed of on 31 May 2023 with the Court ultimately setting aside the impugned order under

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[1] Act
[2] AY

Section 148A(d) and remanding the matter for consideration afresh. It is pursuant to the said remit that the impugned orders have come to be passed.

5. We note that insofar as investments in debentures or other such securities being transactions of a capital character can no longer be questioned in light of the decision of this Court in **Angelantoni Test Technologies Srl vs. Assistant Commissioner of Income-tax and Ors**[3] and where we had 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* v. *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)."*
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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*

[3] 2023 SCC OnLine Del 8486

escaped assessment is entirely without basis and is rejected as such."

7. Further, the action of the Respondents is in contravention of the CBDT Instruction No. 2 of 2015 dated 29th January, 2015 reiterating the view expressed by the Bombay High Court in *Vodafone India Services Pvt. Ltd.* v. *Union of India* ((2014) 368 ITR 1 (Bom)) that no income arises on investment in shares since it is a capital account transaction.

8. In fact, the judgment of the Bombay High Court was accepted by the Union Cabinet and a press note dated 28th January, 2015 was issued by the Press Information Bureau, Government of India. The relevant portion of the said press note is reproduced hereinbelow:

> *"**Acceptance of the Order of the High Court of Bombay in the case of** Vodafone* India Services Private Limited
>
> *The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, in a major decision, has decided to accept the order of the High Court of Bombay in the case of* Vodafone India Services Private Limited (VISPL) *dated 10.10.2014. This is a major correction of a tax matter which has adversely affected investor sentiment.*
>
> *Based on the opinion of Chief Commissioner of Income-tax (International Taxation), Chairperson (CBDT) and the Attorney General of India, the Cabinet decided to*
>
> *i. accept the order of the High Court of Bombay in WP No. 871 of 2014, dated 10.10.2014; and not to file SLP against it before the Supreme Court of India;*
>
> *ii. accept of orders of Courts/IT AT/DRP in cases of other taxpayers where similar transfer pricing adjustments have been made and the Courts/IT AT/DRP have decided/decide in favour of the taxpayer.*
>
> *The Cabinet decision will bring greater clarity and predictability for taxpayers as well as tax authorities, thereby facilitating tax compliance and reducing litigation on similar issues. This will also set at rest the uncertainty prevailing in the minds of foreign investors and taxpayers in respect of possible transfer pricing adjustments in India on transactions related to issuance of shares, and thereby improve the investment climate in the country.*
>
> *The Cabinet came to this view as this is a transaction on the capital account and there is no income to be chargeable to tax. So applying any pricing formula is irrelevant.*

> *xxxxxxxxx*
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> *VISPL filed a 2nd Writ Petition in the High Court of Bombay. The High Court, on 10.10.2014, has amongst other things observed:*
>
> *xxxxxxxxx*
>
> *e) The issue of shares at a premium is on Capital account and gives rise to no income. The submission on behalf of the revenue that the shortfall in the ALP as computed for the purposes of Chapter X of the Act is misplaced. The ALP is meant to determine the real value of the transaction entered into between AEs. It is a re-computation exercise to be carried out only when income arises in case of an International transaction between AEs. It does not warrant re-computation of a consideration received/given on capital account."*
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> **9.** Further, this Court in *Divya Capital One Private Limited (Earlier Known as Divya Portfolio Private Limited)* v. *Assistant Commissioner of Income Tax Circle 7(1) Delhi*, 2022 SCC OnLine Del 1461 held that '*Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable of tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act'."*

6. The initiation of reassessment is thus liable to be quashed and set aside on this score alone.

7. The writ petition is accordingly allowed. The impugned order referable to Section 148A(d) as well as notice under Section 148, both dated 30 August 2023 are hereby quashed and set aside. This order, however, shall be without prejudice to the right of the respondents to draw proceedings afresh, if otherwise permissible in law.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 13, 2024/sp