$~17

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

\+ W.P.(C) 12953/2019

COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION(AS THE SUCCESSOR-IN-INTEREST OF ERSTWHILE MARKETRX, INC) .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aditya Vohra & Mr. Deepesh Jain, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX & ORS. .....Respondents

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **04.09.2024**

1. The writ petitioner impugns the notice dated 31 March 2019 pursuant to which proceedings under Section 148 of the **Income Tax Act, 1961**[1] were sought to be initiated for **Assessment Year**[2] 2012-13. From the reasons which have come to be recorded by the **Assessing Officer**[3], we take note of the following facts.

2. The AO had taken cognizance of **M/s MarketRx India Private Limited**[4] and **M/s Cognizant India Private Limited**[5] having amalgamated with **M/s Cognizant Technology Solutions India Pvt.**

[1] Act
[2] AY
[3] AO
[4] MIPL
[5] CIPL

Ltd.[6] with effect from 01 April 2011 pursuant to a Scheme of Arrangement which came to be approved by the Madras High Court. It was on the basis of the aforesaid scheme and the allotment of shares to parties inter se that appears to have weighed upon the AO to examine whether any capital gains could be said to have arisen.

3. This becomes apparent from the AO observing that capital gains are to be assessed in the hands of the shareholders of the amalgamating companies and which were found to be non-resident companies located in Mauritius and the United States of America. However, it has thereafter proceeded to pertinently observe as follows:-

> "Further, the shares allotted under the scheme of amalgamation are not liable for capital gains tax under the provisions of UIT Act. As per Section 47(vii), allotment of shares under the scheme of amalgamation, to the shareholders of the amalgamating company, is not to be regarded as "Transfer" for the purpose of determining the Capital Gains, if any, in view of the provisions of Section 47(vii) r.w.s. 2(1B) of the Act r.w. the order of High Court. Any attempt to deviate from the above may amount to contempt of court. Therefore, no action is possible."

4. As is manifest from the aforesaid extract, the AO acknowledges and concedes to the position that allotment of shares pursuant to a Scheme of Arrangement cannot be regarded as a transfer for the purposes of determining capital gains by virtue of the provisions contained in Section 47(vii) read along with Section 2(1B) of the Act.

5. However, and curiously after having come to that conclusion, it has proceeded to hold as follows:-

> "However, as per DTAA, the Cognizant (Mauritius) Ltd., is exempt from capital gains tax. This leaves, only the balance of Rs. 91.58 crores to be considered as Long Term Capital Gains in the hands of M/s Market Rx Inc. USA. Thus, out of the total capital gains of Rs.7,018 crores to be considered as escapement of long term capital

[6] CTSIPL

gains. Rs.6,927 crores is exempted capital gains and only the balance of Rs.91.58 crores is taxable LTCG in the hands of the USA shareholder, whose tax effect will be only Rs.19.23 crores."

6. In our considered opinion, once the AO had come to the definitive conclusion that no transfer was involved by virtue of Section 47(vii) of the Act, the issue of long term capital gains clearly disintegrated and could not have been possibly sustained.

7. We, accordingly, find ourselves unable to sustain the reasoning on the basis of which reopening is premised.

8. We, accordingly, allow the writ petition and quash the impugned notice dated 31 March 2019 and all consequential proceedings.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 04, 2024/RW