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

\+ W.P.(C) 13583/2018

NAVILITH HOLDINGS LIMITED .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Prakash Kumar, Adv.

versus

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

Through: Mr. Vipul Agrawal, SSC along with Mr. Gibran Naushad & Ms. Sakshi Shairwal, JSCs.

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

<u>O R D E R</u>

% **12.07.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "a) issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate writ, order or Direction under Articles 226 and 227 of the Constitution of India, calling for the records of the Petitioner's case so far as they relate to the Impugned Notice dated March 26, 2018 u/s 148 of the Income Tax Act, 1961, Impugned Reasons (which are undated) and the Impugned order/letter dated November 29, 2018 and after going through and examining the question of the validity, property and legality thereof, be pleased to quash and cancel the Impugned notice dated March 26, 2018 u/s 148 of the Income Tax Act, 1961, Impugned Reasons (which are undated) and the Impugned Order/Letter dated November 29, 2018, and quash the re-assessment proceeding proposed to be commenced by Respondent;
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> b) issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 & 227 of the Constitution of India ordering and directing Respondent, her subordinate, servants and agents to forthwith (i) withdraw and/or cancel the impugned notice dated 26 March, 2018

u/s 148 of the Income Tax Act, 1961, impugned reasons (which are undated) and impugned Order/Letter dated 29 November 2018 passed by Respondent, (ii) to hold the impugned notice dated 26 March, 2018 u/s 148 of the Income Tax Act, 1961, impugned reasons (which are undated) and impugned Order/Letter dated 29 November, 2018 to be without jurisdiction, invalid and void ab intio (iii) to stay the impugned notice dated 26 March, 2018 u/s 148 of the Income Tax Act, 1961 & further proceeding from the impugned Order/Letter dated 29 November, 2018;

c) issue a Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate writ, order or Direction under Articles 226 and 227 of the constitution prohibiting the Respondent from continuing with the reopening/reassessment proceedings and/or from passing any further order for the Assessment Year 2011-12;

d) that pending the hearing and final disposal of this petition, the Respondent by herself, her officers, subordinates, servants and agents be directed by an interim order and injunction of this Hon'ble Court to forthwith stay the operation, execution and implementation of the Impugned Notice dated 26 March, 2018 u/s 148 of the Income Tax Act, 1961, Impugned Reasons (which are undated) and Impugned Order/Letter dated 29 November 2018 and any proceedings for assessment and recovery in pursuance or in furtherance thereof.

e) ad-interim reliefs in terms of prayer (d) above;

f) that the Petitioner may be granted the cost of Petition; and

g) that such further and other reliefs as the nature and circumstances of the case may require may be granted by the Hon'ble Court."

2. The petitioner assails the reopening of assessment pertaining to Assessment Year ['**AY**'] 2011-12. As would be evident from the reasons which came to be recorded, the transactions in question were an investment of INR 639,53,42,000/- which had been made and the receipt of interest income of INR 64,45,42,703/- on which admittedly tax had been deducted at source at the rate 10%.

3. Since the dispute lies in a narrow compass, we deem it apposite to extract the reasons which weighed upon the Assessing Officer ['**AO**'] to come to the conclusion that income liable to tax had escaped assessment. The reasons are extracted hereinbelow: -

"2. The perusal of the ITS/AIR/CIB information reveals that during the FY 2010-11 the assessee has made the following investment/transactions:-

a) Acquired Bonds/Debentures from India Bulls Properties Private Limited amounting to Rs 3,03,23,14,000.

b) Acquired Bonds/Debentures from India Bulls Real Estate Company Private limited amounting to Rs 33,36,30,28,000/-.

b) Income income from India Bull Properties Private Limited total amounting to Rs 64,45,42,703/-

3. During the Financial year 2010-11, has made transaction in the nature of investment of Rs. 6,39,53,42,000 and have received Rs.64,45,42,703/- from India Bulls on which TDS has been deducted @ 10%. The above information has been examined and it was found that the assessee has not filed any return of income for the captioned period. There is no material on record to examine the source of investment and other income whether the same was offered to tax.

4. Further, as per section 69 of the Income Tax Act, 1961:

"where in any financial year immediately preceding the assessment year the assessee has investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of investment, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of investments may be deeded to be the income of the assessee of such financial year."

Since no explanation of investment has been furnished, therefore, the provisions of section 69 of the Income Tax Act, 1961 will be applicable to the assessee. Further the assessee has not filed its income tax return for AY 2011-12 which clearly indicates that income has not been offered to tax.

5. From, the above discussion, it is clear that Navilith Holdings Limited has not offered the details of investment Rs,6,39,53,42,000/-(approx.).

6. In view of the above, I have reason to believe that the income of Rs.6,39,53,42,000/-(approx.) chargeable to tax has escaped assessment as defined u/s 147 of the Income Tax Act, 1961 for the Assessment Year 2011-12 by reason of failure on part of the assessee to disclose fully and truly all material facts. Therefore, it is fit case for initiating proceedings u/s 147 of the Income Tax Act, 1961. Accordingly, notice u/s 148 of the Act may be issued in this case.

7. No assets located outside India as per information available this office.

> 8. In this case no return of income was filed for the year under consideration accordingly, in this case, no assessment was made and the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above. It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed in paragraph 6 above and the assessee was assessable under the Act. In view of the above, provisions of clause @) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. This case is beyond four years & within six years from the end of the assessment year under consideration. Approval u/s 151(1) of the Act is solicited. Accordingly, put for your kind perusal and approval please."

4. From the material which has been placed on the record, we find that the petitioner is stated to be a company established under the laws of Cyprus and being a tax resident of that nation had claimed protection under the India-Cyprus Double Taxation Avoidance Agreement [‘**DTAA**’]. It was its case that since there was no income chargeable to tax which arose in India in that year, it was not required to file a return. This more so in light of Section 115A of the Income Tax Act, 1961 [‘**Act**’] and bearing in mind that the income earned was only interest on debentures.

5. The respondents acting through the Deputy Director of Income Tax, Circle-1(1), International Taxation on 24 August 2013 addressed a communication to the petitioner, calling upon it to explain the circumstances surrounding the non-filing of a Return of Income. In response to the aforesaid, the petitioner by a letter of 11 October 2013 drew the attention of the authority to the provision of Section 115A asserting that since the income comprised only of interest from an Indian concern on which tax had already been deducted at source in terms of Chapter XVII-B, it was not liable to file any Return of

Income. This was followed by another letter of 14 March 2018 and whereafter the impugned notice under Section 148 came to be issued on 26 March 2018.

6. As is evident from a reading of the reasons which have come to be recorded, the AO had found that the petitioner had made investments in the shape of bonds/debentures of India Bulls Properties Private Limited amounting to INR 3,03,23,14,000/- and INR 3,36,30,28,000/-. It had also alluded to the interest income which was earned and which totaled INR 64,45,42,703/-. The AO has for the purposes of justifying reopening noted that during the Financial Year [‘**FY**’] 2010-11, the petitioner had made an investment transaction amounting to INR 6,39,53,42,000/- and had received INR Rs.64,45,42,703/- as interest income on which tax had been duly deducted at the rate of 10%

7. Before us, it is not disputed that the remittance of interest income in terms of the DTAA could have been subjected to a tax of a maximum of 10%. That tax liability already stood satisfied by virtue of the deduction at source. As noticed hereinabove, the same had already been subjected to tax at the maximum rate which would have been applicable in terms of the DTAA. The initiation of reassessment on this score is clearly untenable and unjustified.

8. The AO thereafter proceeded to record that it had been found that the assessee had neither filed a Return of Income nor was there any material on the basis of which the source of investment and other income could have been ascertained. It was in the aforesaid context that the AO referred to Section 69 of the Act.

9. Insofar as the investment is concerned, undisputedly the same would clearly not constitute income, bearing in mind the following

principles which had been laid down in **Angelantoni Test Technologies SRL vs Assistant Commissioner of Income Tax, Circle Int Tax 1(1)(1) & Ors.** [2023 SCC OnLine Del 8486]:-

> "**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."

10. Insofar as the reliance placed on Section 69 is concerned, we find that the same is clearly misconceived for the following reasons. It becomes pertinent to note that Section 69 stands constructed in the following terms:

> "**69. Unexplained investments.**— Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

11. As is manifest from the above, the provisions enable the AO to assume that the value of investments made would be deemed to be the income of the assessee in that FY, if the assessee fail to record the investments made either in the books of account or is unable to proffer a satisfactory explanation with respect to the source of income.

12. Viewed from any angle, the provision of Section 69 would have ultimately only culminated in the AO assuming that the investments would be deemed to be the income of the assessee. This, in any case, would not arise in the facts of the present case, since the investments were undoubtedly made in debentures and which would constitute an investment of a capital character and thus not liable to be treated as income. Furthermore, it is undisputed that the capital for investment and subscription to debentures came from overseas.

13. Accordingly, and for all the aforesaid reasons, we find ourselves unable to sustain the reassessment action.

14. The writ petition is consequently allowed. The impugned notice issued under Section 148 dated 26 March 2018 is hereby quashed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 12, 2024/RW