



W.P.No.7074 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.10.2024
Pronounced On	02.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.7074 of 2022
and W.M.P.Nos.7101 & 7102 of 2022**

M/s.Verizon Services Singapore Pte Ltd.,
Represented by its Authorized Signatory
Mr.Ramnath Subramanian,
No.10, Ocean Financial Center,
Collyer Quay#16-01, Singapore

...Petitioner

Versus

1.Assistant Commissioner of Income-Tax,
International Taxation – 2(2), Chennai,
Room No.410, 4th Floor, BSNL Building,
Tower – I, Greaves Road,
Chennai – 600 006.

2.Commissioner of Income Tax,
International Tax, Range 2, Chennai,
4th Floor, BSNL Building,
Tower – I, Greaves Road,
Chennai – 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorari calling for the records comprised
in the impugned notice bearing DIN No.ITBA/COM/F/17/2020-
21/1032087305(1) dated 31.03.2021 issued by the First Respondent under



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Section 148 of the Act for the Assessment Year 2014-15 and the consequential impugned order being DIN No.ITBA/AST/F/17/2021-22/1041009673(1) dated 18.03.2022, quash the same.

For Petitioner : Mr.Ajay Vohra,
Senior Counsel
for Mr.N.V.Balaji

For Respondents : Mr.B.Ramana Kumar,
Senior Standing Counsel

ORDER

The present writ petition is directed against the impugned Notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act') for the Assessment Year 2014-15 and the consequential, Speaking Order dated 18.03.2022 passed by the 1st respondent, over-ruling the objections of the petitioner against the re-opening of the assessment.

2. The respondent/Income Tax Department had issued the impugned Notice dated 31.03.2021 under Section 148 of the IT Act for the proposed re-assessment of escaped income of the petitioner for the Assessment Year 2014-15 and had called up the petitioner to file a Return of Income, within



30 days from the service of the impugned notice. The impugned notice dated 31.03.2021 issued under Section 148 of the IT Act reads as under :-

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“Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2014-15 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961. I, therefore, propose to assess/re-assess the income/loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year. This notice is being issued after obtaining the necessary satisfaction of the INTL TAXATION RANGE 2 CHENNAI”

3. Reasons for re-opening of assessment were stated in the order dated 03.03.2022 passed by the Assessing Officer. The said order is extracted hereunder:-

“Consequent to the return filed for the above AY in response to notice u/s 148 of the IT Act, 1961, the reasons for re-opening of assessment are communicated to you as under.

It is seen that the resident company (Verizon Data Services India Private Limited) had entered into a buyback arrangement with Verizon Services Singapore PTE limited for the purchase of 3,18,400 shares at the cost of Rs 3750/- per share totalling Rs 118,05,00,000 during FY 2013-14. It is seen from the evidence ascertained that in the December 2012 the share valuation of the company was only Rs 3050/-. However the value it was estimated on 31 March 2013 is just within 3 months was Rs 3750/- per share as per the submissions of the resident entity itself. Such increase given no significant change in the business model or short time involved is unlikely to be based on the rational valuation. The same appears to have been made to subsume excess amount over and above the capital gains. Since capital gains is exempt from taxation as per India Singapore DTAA but income from other sources is not. The valuation made also was made only for the purpose of RBI with no reference or



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reliance towards the value of earlier valuation done just a few months back by the company itself. Further the assessee has income receipts from India during the year, which are not covered by the exemption of filing of return by Non Resident entities under section 115A of the Income Tax Act.

*Therefore, the Assessing Officer had reason to believe that income of Rs. 22,03,60,000/- (3,18,400 * 700) has escaped assessment for AY 2014-15 and the same was due to the failure of the Assessee to fully and truly disclose all material facts for the correct assessment of Income. The Assessee has as per details available on record not filed the return of Income. The Assessee is having income which is not eligible from exemption of filing income tax returns under section 115A and is obligated to file the return of Income for AY 2014-15."*

In this regard an opportunity of being heard is accorded to furnish your objections, if any, as laid down in the case of GKN Driveshafts (India) Ltd vs. ITO (2003) 259 ITR 19 (SC), latest by 08.02.2022 by 05.00 PM. Your objections may please be forwarded to the email [id:chennai.dcit.it2.2@incometax.gov.in](mailto:chennai.dcit.it2.2@incometax.gov.in)(word format). Please note that if the objections are not received on or before the said date, it will be construed that you have no objections to offer and necessary action will be taken accordingly."

4. The respondent/Income Tax Department thereafter passed the impugned Speaking Order dated 18.03.2022, disposing of the objections of the petitioner against the re-opening assessment. The said Speaking Order reads as under :-

"The assessee, M/s. Verizon Services of Singapore Pte Ltd (PAN AAICV0891K) incorporated under the laws of Singapore and is a Tax resident of Singapore. The assessee is engaged in the business of global communications and Data Centre in the USA. During the AY 2014-15 relevant to the FY 2013-14, it had received remittances to the tune of Rs. 118,05,00,000/- being the buyback of 3,18,400 shares at the cost of



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Rs.3750 per share by the resident company Verizon Data Services India Private Limited. The resident company had entered into a buyback arrangement with Verizon Services Singapore PTE limited for the purchase of 3,18,400 shares(buyback) at the cost of Rs 3750 per share totalling Rs 118,05,00,000 during FY 2013-14. It is seen from the evidence gathered that in December 2012, the share valuation of the company was only Rs 3050/-. Subsequently, however the value of share was estimated on 31 March 2013 as per the buyback agreement, just within 3 months at Rs 3750/- per share as per the submissions of the resident entity itself. Such increase, given no significant change in the business model or short time involved is unlikely to be based on the rational valuation. The same, therefore appears to have been made to subsume surplus income as capital gains, since capital gains is exempt from taxation as per India Singapore DTAA but income from other sources is not. The valuation was also made only for the purpose of RBI with no reference of earlier valuation done just a few months back by the company itself. Further the assessee had income receipts from India during the year, which were not covered by the exemption of filing of return by Non Resident entities under Section 115A of the Income Tax Act.

2. The Assessee has also got no PAN and had also as per details available on record not filed the return of Income. Though, the assessee was having income which was not eligible from exemption of filing income tax returns under section 115A and is obligated to file the return of Income for AY 2014-15, but had failed to do so. In the above circumstances, the Assessing Officer had reason to believe that income of Rs22,03,60,000/- (3,18,400 700) has escaped assessment for AY 2014- 15 and the same was due to the failure of the Assessee to fully and truly disclose all material facts for the correct assessment of Income and as the assessee has failed to fully and truly disclosed all material facts required for correct assessment of income, the case was reopened. After obtaining approval of the Competent Authority, i.e., the Commissioner of Income Tax (International Taxation), Chennai, the case was reopened for bringing to tax income which had escaped assessment and a notice u/s 148 as per the Income tax Act, 1961 was issued to the assessee on 31.03.2021. Notice u/s 142(1) of the Income tax Act, 1961 was issued on 04.02.2022 for filing of Return of Income for A.Y 2014-15. The assessee, in response to the same had filed the Return of Income for the AY 2014-15 manually, as it was not able to upload the same due to technical glitches and requested the A.O to take note of it.

3. It is a clear case for reopening the assessment, due to the fact



that the assessee has not shown any amount as receipts in the return of income to be filed for the AY 2014-15, though there were receipts from remittances. Hence, there is reason to believe that income of Rs. 22,03,60,000/- has escaped assessment in the case of the Assessee owing to the failure of the assessee to disclose true and full facts in the return of income.

4. As per Section 147 read with the first proviso of the Income Tax Act, 1961, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment and wherein there was a failure on the part of the assessee to disclose fully and truly all material facts, the case is a fit case for reopening.

5. The assessee vide its reply dated 08.03.2022 & 10.03.2022 after the reasons for reopening was provided to the assessee on 03.03.2022 consequent to filing of its return of income on 02.03.2022, in response to notice u/s.148, has submitted the following:

i. Issue of notice is invalid and in direct contrast with the directions of the Central Board of Direct Taxes;

ii. Reassessment is invalid due to an incorrect issuance of notice;

iii. Reassessment is invalid due to an improper service of notice;

iv. Reassessment should be based on a reason to Believe and not a reason to suspect,

v. No computation /valuation mechanism prescribed under the Act

vi. Non provision of sanction letter provided by the Principal Commissioner/ Commissioner for initiation of reassessment proceedings;

vii. Allegation of Non-filing of the ROI in the absence of any exemption is not warranted;

6. It is admitted that in the address column, an inadvertent



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typographical error had crept in the Notice but the notice was digitally signed and shared with E Proceedings on 31.03.2021. Hence, the assessee's allegation that the notice was invalid is not tenable. Further, when the notice was served by e-mail, it was assessee who was required to take steps to file the return. Even, in the notice issued under section 148, it was specified that the notice was issued with the prior approval of the Competent Authority, hence, issue of any sanction letter is not mandated in the Act. Without prejudice to the points specified by the assessee, it is mentioned that the facts of the case are unique to assessee and the factual position is that the assessee had in its return of income failed to explain fully and truly all the material facts relating to its receipt of remittances amounting to Rs.118,05,00,000/- for the AY 2014-15 hence, the assessment has been reopened.

7. It is brought to the notice of the assessee that the undersigned has fully complied with the direction of the Apex Court in the matter of GKN Driveshaft (India) Ltd vs. ITO (2003) 259 ITR 19(SC) and has furnished the reasons duly to the Assessee, hence, the objection is disposed of by passing this Speaking Order.

8. Without prejudice to what has been stated by the assessee in its letter dated 08.03.2022, all the objections raised by the Assessee on facts stands answered and reopened proceedings are hereby resumed in the true spirit of the Hon'ble Supreme Court's directives in the matter of GKN Driveshaft (India) Ltd.”

5. The specific case of the petitioner is that the petitioner became an assessee under the IT Act and had obtained PAN Registration as an assessee only on 31.05.2021 i.e, after the issuance of impugned Notice under Section 148 of the IT Act on 31.03.2021.

6. It is submitted that there is a clear admission in the impugned



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order dated 18.03.2022 itself that the impugned Notice dated 31.03.2021 was not served on the petitioner and instead, served at **Verizon Services Singapore Limited**, Visteon Tax Office, One Village Centre Drive, Van Baren Township, Michigan, USA.

7. The petitioner had invested 3,18,400 shares in Verizon Data Services India Private Limited (VDSI Pvt. Ltd.,) during December 2012 at Rs.3,050/- per share. It is the further case of the petitioner that the shares were sold back to the said company under a buyback Agreement during the Financial Year **2013-2014** at Rs.3,750/- per share, resulting in payment of Rs.118,05,00,000/- to the petitioner.

8. It is submitted that the petitioner had taken a categorical stand that the petitioner was also not liable to tax even otherwise on account of Double Taxation Avoidance Agreement between India and Singapore which exempts tax on “capital gain” under Section 46A of the IT Act. However, ignoring the same, the Department proceeded to issue impugned notice dated 31.03.2021 which was received beyond the statutory period of limitation of six years and has passed the impugned order dated 03.03.2022,



wholly without jurisdiction.

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9. The learned Senior Counsel for the petitioner who appears through Video Conferencing has drawn the attention of this Court to the decision of the Division Bench of Delhi High Court in the case of ***Suman Jeet Agarwal Vs. Income Tax Officer*** reported in ***[2022] 143 axmann.com 11 (Delhi)*** dealing with an identical situation where regarding the non-service of notice in time, the Court held as under:-

“28.1. With respect to the Notices falling under the category “D” dated 31.03.2021 and digitally signed on 31.03.2021 it has been stated that, they were not served on the assessee either by e-mail or post or by courier services as they were just uploaded on the E-filing portals of the assessee. It is the case of the petitioners that no real time alert was received by the assessee and the Department has not disputed this fact.

28.7. We hold that, in order for this mode of transmission i.e. uploading of the Notices in the E-filing portal of the assessee, to be considered valid service, the Department should have issued a real time alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. Since, the prescribed mode of service is not followed it is akin to no due despatch of Notices, therefore it cannot be said that the Notices were validly issued.

28.9. It has come on record that the ITBA records the time and date when the E-filing portal is accessed by the assessee, so the first date on which the Notices were accessed by the assessee is duly available. This date will be considered by the JAOs as the date of issuance of Notices by the JAOs.”



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10. It is submitted that neither there was an issuance of valid service of notice within the statutory period of limitation for the Assessment Year 2014-15, nor on merits, it is submitted that no income had escaped assessment warranting issuance of Notice under Section 148 of the IT Act on 31.03.2021. In view of Section 46A of the IT Act read with Double Taxation Avoidance Agreement with Singapore which specifically exempts tax on capital gains under Section 46A of the IT Act, there was no scope for issuing the impugned order.

11. It is further submitted that the reasons given by the respondents for re-opening of the assessment which has been confirmed in the impugned order merely states that the difference between the Sale Value and Purchase Value (Rs.3,750 – Rs.3,050 = Rs.700) was “unexplained income” cannot be countenanced, as it is indeed taxable under Section 46A of the IT Act, but exempt in view of the residential status of the petitioner, as the petitioner is from Singapore under the Double Taxation Avoidance Agreement with



Singapore.

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12. The learned Senior Counsel for the petitioner further submits that all transactions entered into by **VDSI Pvt. Ltd.** (Indian entity) with its non-resident Associated Enterprises (including the transaction of share buyback in question) was referred to the Transfer Pricing Officer (“TPO”) for scrutiny and the TPO in his Order dated 31.10.2017 did not see any requirement to make any adjustment to the valuation at which the buyback was undertaken.

13. It is further submitted that the 1st respondent had earlier formed an opinion in the case of **VDSI Pvt. Ltd.** *i.e.*, payer, in respect of the buyback transactions in question, pursuant to proceedings initiated under Section 201 of the IT Act and accordingly, concluded the proceedings vide Order dated 29.02.2016 was without making any adjustments to the consideration paid by **VDSI Pvt. Ltd.** / the petitioner.

14. The learned Senior Counsel for the petitioner submits that the



impugned demand is also contrary to the CBDT Circular No.3/2016 dated 26.02.2016. It is therefore submitted that impugned order is liable to be quashed. Relevant portion of CBDT Circular No.3/2016 dated 26.02.2016 is extracted as under :-

“4. Accordingly, the CBDT hereby clarifies that consideration received on buyback of shares between the period 01.04.2000 till 31.05.2013 would be taxed as capital gains in the hands of the recipient in accordance with section 46A of the Act and no such amount shall be treated as dividend in view of provisions of section 2(22)(iv).

*5. With a view to bring about further clarity on this issue as a step towards non-adversarial tax regime, the CBDT hereby directs that as a matter of general principle, no fresh notice for assessment/reassessment/non-deduction of TDS at source shall be issued where buyback of shares has taken place prior to **01.06.2013** and the case is covered under section **46A** read with section 2(22)(iv) of the Act. **In cases where notices have already been issued and assessment proceedings are pending, tax authorities shall complete the assessment keeping in view the above legal position.**”*

15. On the other hand, the learned Senior Standing Counsel appearing for the respondent/Income Tax Department submits that the present writ petition is not maintainable since the petitioner has an effective and efficacious alternate statutory remedy by way of an Appeal consequent to the completion of the reassessment proceedings initiated u/s.147 of the IT Act.



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16. It is submitted that the Notice u/s.148 of the IT Act was digitally signed by the respondent on 31.03.2021. Subsequently, on 04.02.2022, a notice u/s 142(1) was sent to the assessee enclosing the impugned notice u/s.148 and the petitioner in his reply along with objections dated 10.02.2022 has also acknowledged both the notices under Section 148 and Section 142(1).

17. It is submitted that the reasons for reopening of assessment was communicated by the respondent to the petitioner on 03.03.2022 and a Speaking Order was passed on **18.03.2022** in conformity to the guidelines laid down in ***GKN Driveshafts (India) Ltd Vs. ITO (2003) 259 ITR 19 (SC)***.

18. It is submitted that in the Speaking Order dated 18.03.2022 communicated to the petitioner there was a clear case of reopening the assessment as the petitioner had failed to file its Return of Income to explain receipt of remittances amounting to Rs.118.05 Crores for Assessment Year 2014-15 and the claim of the petitioner that it was not



obligated to hold a PAN is incorrect in view of provisions under Section 115A(5) and Section 139A of the IT Act.

19. It is further submitted that Section 148 of the IT Act merely specifies that a notice for the purpose of assessment, reassessment or re-computation u/s 147 of the IT Act is to be served on the assessee and there is no time limit specified u/s 148 of the IT Act for its service. It is submitted that the 1st respondent has complied with the condition laid down u/s 148 of the IT Act, by issuing a notice on 31.03.2021 to the petitioner. The said notice was digitally signed by the 1st respondent and sent through Electronic Mail to the ID of the petitioner provided by the Indian entity viz., **VDSI Pvt. Ltd.**

20. It is further submitted that the request of the petitioner to furnish a copy of sanction u/s. 151 does not hold good for the reason that Section 151 of the IT Act only specifies the time limit for sanction for issuance of notice and does not prescribe any condition for providing a copy of such sanction to an assessee.



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21. Heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

22. Challenge to the impugned notice dated 31.03.2021 issued under Section 148 of the IT Act cannot be countenanced merely because there is an typographical error in the address mentioned therein, notice has not been served to the petitioner's address i.e., M/s.Verizon Services Singapore Pte Ltd., instead of which, the same has been served to the incorrect address i.e., “Visteon Tax Office, One Village Centre Drive, Van Baren Township, Michigan, USA”.

23. Based on the information covered by the Department, **VDSI Pvt. Ltd.** who brought back its shares from the petitioner pursuant to a buyback Agreement dated 29.04.2013 for a sum of Rs.118,05,00,000/-. Even, if the petitioner was exempted from payment of tax on the capital gains under Section 46A of the IT Act, the petitioner was indeed required to file a Return of Income declaring Nil income under Section 139(1) of the IT Act.

24. The fact is that the respondent has passed an impugned Speaking



Order dated 18.03.2022 after the petitioner filed its Return of Income manually on 02.03.2022 and also, after the petitioner obtained its Registration under IT Act on 31.05.2021.

25. In all probability, the issue could have been determined in terms of CBDT Circular No.3/2016 dated 26.02.2016, contents of which have been extracted above. However, without filing of proper Return of Income, the petitioner has claimed exemption under India-Singapore Double Taxation Avoidance Agreement. Hence, the respondent/Income Tax Department has issued Notice under Section 148 of the IT Act to the petitioner, which was culminated in the impugned Speaking Order dated 18.03.2022 as per the decision of the Honourable Supreme Court in the case of ***GKN Driveshafts (India) Ltd Vs. ITO*** reported in ***(2003) 259 ITR 19 (SC)***.

26. Considering the fact that the respondent/Income Tax Department has passed the impugned Speaking Order dated 18.03.2022 without considering the CBDT Circular No.3/2016 dated 26.02.2016 and taking note of the fact that the petitioner had subsequently filed its Return of Income manually on 02.03.2022, the petitioner can be given a reasonable



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opportunity to explain its case afresh in the light of CBDT Circular No.3/2016 dated 26.02.2016. Therefore, the impugned Speaking Order dated 18.03.2022 can be set aside by way of remand.

27. In the result, this writ petition is allowed and the impugned order 18.03.2022 is set aside and the matter is remitted back to the 1st respondent to pass fresh order on merits, preferably, within a period of three months from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner to put forth their case. No costs. Consequently, connected miscellaneous petitions are closed.

02.01.2025

jas/mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

1. Assistant Commissioner of Income-Tax,
International Taxation – 2(2), Chennai,
Room No.410, 4th Floor, BSNL Building,
Tower – I, Greaves Road,
Chennai – 600 006.

2. Commissioner of Income Tax,
International Tax, Range 2, Chennai,

17/18



4th Floor, BSNL Building,
Tower – I, Greaves Road,
Chennai – 600 006.



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C.SARAVANAN, J.

jas/mrr

**Pre-Delivery Order in
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