



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 208

Telenor south Asia Investment Pte. Ltd.

v.

DCIT. Delhi

Investment made in the share capital of
Subsidiary company could not be treated
as income as same was in nature of capital
account transaction

01.06.2024



Facts of the Case

- ❖ Assessee is a company resident of Singapore and made investment of Rs.1466 crores in the equity shares of its Indian subsidiary company.
- ❖ Assessing officer issued notice under section 148A(b) on ground that assessee not explained the source of investment of Rs. 1466 Crore made in the Telenor India.
- ❖ Further, Assessing officer not persuade the assessee company reply and passed order u/s 148A(d).
- ❖ However, Assessing officer treated the said investment as income of the assessee company.

Assessee's Contention

- ❖ In relation to the investment made in its Indian subsidiary company assessee company submitted the following documents to the Assessing officer.
 - Foreign Inward Remittance certificate (FIRC) copy of bank evidencing the capital infusion in the subsidiary of Rs. 1466 Crore
 - Audited Financial statement of Telenor India
 - Letter from department of telecommunication Government of India

- ❖ Further, Assessee company contented that order passed by the assessing officer is flawed based on the following reason:
 - AO does not have any material information that assessee company escaped its income by investment made in its subsidiary company.

Assessee's Contention

- AO not considered the Form FIRC and communication letter received from the telecommunication department.
- ❖ Assessee company further contented that the investment made in the equity shares of subsidiary company it would be considered as 'capital account transaction'.

Revenue's Contention

- ❖ Income tax department submitted that the assessment has been initiated in accordance with the Risk Management Strategy formulated by the Central Board of Direct Taxes ("CBDT") in terms of Explanation 1 to Section 148 of the Act.
- ❖ Further, the assessee is required to provide the details of source of investment and if assessee is not able to satisfy the source of investment then such amount would be considered as undisclosed under the Income tax act.

Legal provisions

Income Tax Act, 1961:

Section 4: This section deals with the scope of charge of income tax in India. The Revenue Department might have argued that the investment, if considered income arising in India, would fall under this section.

Section 5: This section defines income under various heads, including income from capital gains and dividends. The Revenue Department might have argued that the investment, if resulting in taxable income, could be categorized under one of these heads.

Section 9: This section deals with income accruing or arising outside India. Telenor South Asia could have relied on this section to argue that the investment originated from Singapore and shouldn't be taxed in India.

Ruling

- ❖ Hon'ble Delhi High court in the case of Angelantoni Test Technologies [W.P.(C) 15928/2023 19.12.2023] where Hon'ble High court held 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.
- ❖ Further, decision of Hon'ble Bombay High court in case of Vodafone Indian service Pvt. Ltd. v. Union of India held that holding such investment in shares to be a capital account transaction not giving rise to income was also accepted by the CBDT and issued instruction 2/2015 dated 29th January 2015 in relation to the acceptance of order of Hon'ble High court of Bombay in case of Vodafone India services Pvt ltd.
- ❖ Therefore, investment made in the equity share capital of subsidiary company does not give rise to income it is to be considered as capital account transaction.

Our Comments

- ❖ In such cases we have seen that Ld. AO sends notice to non-resident and asks to present it's financials and many a times even provide suo moto PAN to such non-residents.
- ❖ It is important to note and see whether Ld. AO have jurisdiction to issue such notice to non-resident and whether they have jurisdiction to ask for the financials/ bank statements of the company situated outside India.
- ❖ Many a times such notice discourage foreign investors to invest in India. Further, there should be a strict mechanism where any such proceedings should be initiated against non-resident after getting proper approval from the higher authorities to reduce harassment of non-resident.
- ❖ Further, in our understanding Income tax officer if has authority can only ask details and queries related Indian income and Indian assets and not foreign income or foreign asset.

Section/Article	Sec 115A, Sec 9 of IT Act
DTAA/Country	India Singapore
Court	Delhi High Court
Date of decision	08.04.2024

Note: Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



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