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

+ **W.P.(C) 17012/2022 & CM APPL. 7087/2023**

SUMITOMO MITSUI FINANCIAL GROUP INC..... Petitioner

Through: Mr Porus Kaka, Sr Adv. with Mr Nishant Thakkar, Mr Nikhil Ranjan, Mr Hiten Thakkar, Mr Kamal Arya, Mr Suhail Bansal, Mr Aditya Singh Chandel, Mr Manish Kant and Mr Ankul Goyal, Advs.

versus

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-3, DELHI AND ANR Respondents

Through: Mr N. Venkataraman, ASG with Mr Aseem Chawla, Sr Standing Counsel, Ms Pratishtha Chaudhary, Standing Counsel along with Mr Aditya Gupta and Ms Simran Jha, Advs.

+ **W.P.(C) 17048/2022**

SUMITOMO MITSUI FINANCIAL GROUP, INC..... Petitioner

Through: Mr Porus Kaka, Sr Adv. with Mr Nishant Thakkar, Mr Nikhil Ranjan, Mr Hiten Thakkar, Mr Kamal Arya, Mr Suhail Bansal, Mr Aditya Singh Chandel, Mr Manish Kant and Mr Ankul Goyal, Advs.

versus

INCOME TAX OFFICER, WARD INT. TAX 3(1)(2), DELHI & ORS. Respondents

Through: Mr N. Venkataraman, ASG with Mr Aseem Chawla, Sr Standing Counsel, Ms Pratishtha Chaudhary, Standing Counsel along with Mr Aditya Gupta and Ms Simran Jha, Advs.

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CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

11.09.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. We had heard the arguments in the above-captioned matters, albeit, briefly on 14.12.2022, the broad contours of the case were etched out. For the sake of convenience, the relevant parts of the order dated 14.12.2022 is extracted hereafter:

“2. Via the aforementioned writ actions, challenge is laid by the petitioner to the order dated 28.11.2022 passed under Section 124 of the Income Tax Act, 1961 [in short “Act”], as well as the notices dated 10.06.2022 and 22.09.2022 issued under section 201(1)/(1A) of the Act, and the order dated 28.11.2022 passed under section 201(1)/(1A) of the Act, along with demand notice dated 28.11.2022 passed under section 156 of the Act.

2.1 For the sake of convenience, the aforementioned orders will be collectively referred to as impugned orders unless the context requires otherwise.

3. Mr Porus Kaka, learned senior counsel, who appears on behalf of the petitioner, says that the order is completely flawed in law.

3.1 Inter alia, it is submitted, that in respect of the transaction in issue, which concerns a Share Purchase Agreement dated 06.07.2021 by the writ petitioner to acquire 74.9% equity stake in a company based in India i.e., Fullerton India Credit Company Ltd. [in short “FICCL”] jurisdiction has already been exercised by the Deputy Commissioner of Income Tax, International Tax Circle 4(2)(2), Mumbai.

4. To be noted, 74.9 % equity stake has been bought by the petitioner from two Singapore based companies i.e., Angelica Investments Pte. Ltd. and Fullerton Financial Holdings Pte. Ltd.

*5. It is also Mr Kaka’s submission, that all statutory approvals were taken both **before and after before and after** [sic: before and after] the subject transaction was entered into by the petitioner. In this context, **refence** [sic: reference] is made to the approval granted by Reserve Bank of India (RBI) and Competition Commission of India (CCI).*



6. *That jurisdiction is exercised by the aforesaid officer, who is located in Mumbai, is sought to be established by placing reliance on the document appended on page 261 of the case file.*
- 6.1 *In this regard, our attention has also been drawn to page 479 of the case file.*
7. *In our view, the matter requires examination.*
8. *Accordingly, issue notice.*
- 8.1 *Mr Ruchir Bhatia, learned senior standing counsel, accepts notice on behalf of respondent nos.1 and 2/revenue.*
9. *Counter-affidavit will be filed within four weeks from today.*
- 9.1 *Rejoinder thereto, if any, be filed before the next date of hearing.*
10. *To be noted, insofar as W.P.(C) 17048/2022 is concerned, apart from the official respondents, two other respondents i.e., Angelica Investment Pte. Ltd. and Fullerton Financial Holdings Pte. Ltd. are arrayed as parties.*
- 10.1 *They are, as noticed above, the sellers of the shares in issue.*
- 10.2 *These parties have been arrayed as respondent nos.3 and 4.*
11. *Mr Mukesh Butani accepts notice on behalf of respondent nos.3 & 4 in W.P.(C) 17048/2022.*
12. *Respondent nos. 3 and 4 are also given liberty to file counter-affidavit(s) within the same timeframe as indicated above i.e., four weeks.*
13. *In the meanwhile, the operation of the impugned orders and notices shall remain stayed till further directions of the Court.*
14. *Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.*
15. *List the matters on 26.04.2023.”*

2. Having heard the learned counsels for the parties, we are persuaded to accept the contention advanced on behalf of the petitioner that the impugned order could not have been passed by the concerned officer, as he had no jurisdiction in the matter.

2.1 Mr Venkatraman, learned Additional Solicitor General (ASG), who appears on behalf of the respondents/revenue, cannot but accept this position.

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3. Accordingly, the impugned order dated 28.11.2022, passed under Section 124 of the Income Tax Act, 1961 [in short “Act”], as well as impugned notices dated 10.06.2022 and 22.09.2022, issued under Section 201(1)/(1A) of the Act, and the order dated 28.11.2022, passed under section 201(1)/(1A) of the Act along with demand notice of even date, i.e., 28.11.2022, passed under Section 156 of the Act are set aside.

3.1 Having said so, all the consequential proceedings will, quite obviously, collapse.

4. Parties will be free to take the next steps in law advised.

5. The above-captioned writ petitions are disposed of in the aforesaid terms.

6. Pending application shall also stand closed.

7. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 11, 2023

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[Click here to check corrigendum, if any](#)