IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

Before Dr. B. R. R. Kumar, Accountant Member
Ms. Astha Chandra, Judicial Member

ITA No. 449/Del/2023 : Asstt. Year: 2017-18

BCP V Singapore FVCI Pte. Ltd., #13-00 #13-00, Robinson 77, 77 Robinson Road 999999, Foreign Singapore	Vs	The ACIT, Circle 1(1)(2), Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAFCB 7895 N		

Assessee by : Sh. Porus Kaka, Sr. Adv.
Sh. Vishal Kalra, Adv.
Sh. Divesh Chawla, CA
Sh. Ketan Ved, CA
Ms. Sumisha Murgai, CA
Revenue by : Sh. Vizay B. Vasanta, Sr. DR

Date of Hearing: 13.12.2023		**Date of Pronouncement: 17.01.2024**

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the assessee against the order of Assessing Officer dated 27.01.2023 for the A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal:-

1. Ground 1 - Validity of reassessment proceedings.
1.1. That on the facts and the circumstances of the case and in law, the learned Assessing Officer ("AO") has erred in reopening the assessment for the year under consideration under section 148 of the Act.

1.2. That on the facts and the circumstances of the case and in law, the impugned reopening under section 148 of the Income-tax Act, 1961 ("the Act") is in excess of jurisdiction and bad in law.

1.3. That on the facts and the circumstances of the case and in law, the proceedings under section 148 of the Act are not in accordance with law and consequently ought to be struck down.

Without prejudice to the above,

2. Ground 2 – Erroneous treatment of the amount of Rs 203,56,82,630 as unexplained investments and treating the same as income for the year under consideration.

2.1. That on the facts and the circumstances of the case and in law, the learned AO has erred in treating the amount of Rs 203,56,82,630 as unexplained investments.

2.2. That on the facts and the circumstances of the case and in law, the learned AO has erred in not appreciating the fact that the Appellant has not earned any income nor has made any investments in non-convertible debentures ("NCD's") during the year under consideration and hence, no income whatsoever was chargeable to tax for the year.

2.3. That on the facts and the circumstances of the case and in law, the learned AO has erred in not meaningfully considering the submissions made by the Appellant explaining the source of investments made by it in the NCD FY 2014-15 in-spite of specific directions in this regard by the Hon'ble DRP and consequently erred in considering the same as unexplained.

2.4. That on the facts and the circumstances of the case and in law, the learned AO has erred in making addition of Rs 203,56,82,630 without considering the fact that during the year under consideration the said amount was only repatriated from the Indian bank account of the Appellant to its own foreign bank in Singapore in AY 2017-18 and no income was earned nor any investment in non-convertible debentures was made in AY 2017-18.

Without prejudice to the foregoing,

2.5. That on the facts and the circumstances of the case and in law, the learned AO has erred in ignoring the fact that the amount of Rs 150,00,00,000 was invested in NCD's in AY 2014-15 and not in AY 2017-18, accordingly, no addition can be made considering the said amount as unexplained in nature during the year under consideration.

2.6. That on the facts and the circumstances of the case and in law, the learned AO has erred in considering that the interest earned by the Appellant on the NCD's is already offered to tax in the earlier years and also taxed as such and hence, taxing the same for the

year under consideration results in double taxation to the extent of such interest which is not permissible.

3. Ground 3 - Consequential interest of R$ 67,62,02,864 under section 234A and of Rs 1,10,07,95,360 under section 234B of the Act

3.1.That on the facts and in the circumstances of the case and in law, the Ld. AO erred in levying interest under section 234A of Rs 67,62,02,864 and 234B of Rs 1,10,07,95,360 of the Act.

4. Ground 4 - Initiation of Penalty

4.1. That on the facts and the circumstances of the case and in law, the learned AO has erred in initiating penalty proceedings under section 270A r.w.s 274 of the Act mechanically and without recording any satisfaction for its initiation.

4.2. That on the facts and the circumstances of the case and in law, the learned AO has erred in not appreciating the facts of the case that there is clear ignorance of factual submissions by the learned AO and there is no misrepresentation and suppression of the fact so as to initiate penalty proceedings.

3. **Section 148:**

The reasons recorded by the Assessing Officer before issue of the notice u/s. 148 are as under:

Annexure "A"

Recording of reasons for reopening the case of
BCP V SINGAPORE FVCI PTE. LTD., A.Y.2017-18
PAN: AAFCB7895N

The case was reflected under AIMS module of ITBA under the category of Non-filers of Income Tax return for the AY 2017-18. The assessee, BCP V SINGAPORE FVCI PTE. LTD.having PAN AAFCB7895N, is a company and has not filed return of income for the AY 2017-18.

2. Therefore, information available in ITS-AIR details was analyzed and it was observed that the assessee, during the financial year

2016-17 relevant to A.Y. 2017-18 has been involved in following transactions:

Sr.No	Nature of transaction	Amount
1	Remittance to a non-resident or to a foreign company	2,03,56,82,630

3. It is pertinent to mention that though the assessee has indulged in above transactions during the year, the assessee has chosen not to file return of its income for the year under consideration in spite of having taxable income.

4. To verify the nature of these transactions and to give an opportunity to the assessee to explain the same, the assessee was issued letter ITBA/AIM/S/95/2020-21/1031493840(1) through ITBA on 15.03.2021 to explain the above mentioned transaction and reason for not filing IT for the year. The assessee was requested to make compliance by 20.03.2021. However, no reply has been received from the assessee till date.

Further ITS details from ITBA, 360 Degree data, E-filing portal and 26A data from CPC TDS has been verified and found that no IT has been filed by the assesse whereas transactions amounting to Rs. 2,03,56,82,630/- has been carried out during the year under consideration.

5. Thus, the above facts indicate that the assessee has failed to file return of income for the year under consideration as per the provisions of Section 139 while prime facie the assessee was having taxable income during the year. Provisions of Sec 139 of the Income Tax Act, 1961 are reproduced below:

"139. (1) Every person,-

(a) being a company for a firm; or

(b) being a person other than a company (or a firm), if her total income or the total income of any other person in respect of which he is assessable

under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax. shall, on or before the due date, furnish a return of her income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:"

6. Therefore, in view of above facts and as per information available on record, the full and true disclosure with regard to the above transactions have not been made by the assessee company. In view of explanation 2 to clause a of proviso of section 647 of the Income Tax Act, 1961, where a return of income has not been furnished by the assessee and it is noticed that the total income of any other person in respect of which he is assessable under the IT Act, 1961 during the year exceeded the maximum amount which is not chargeable to income tax. Keeping in view all the above, I have reason to believe that an amount at least of Rs. 2,03,56,82,630/- has escaped assessment in case of BCP V SINGAPORE FVCI PTE. LTD for the A.Y. 2017-18 within the meaning of Section 147/148 of Income Tax Act, 1961.

6.2 It would be worthwhile to submit here that in the case of Rajesh Jhaveri Stock Brokers Pvt Ltd V ACIT(2007) 291 ITR 500/161 Taxman 316 (SC), Hon'ble Supreme Court has held that:

"All that is required for the Revenue to assume valid jurisdiction u/ s148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."

It is also pertinent to mention that on similar lines, in the case of CIT v. Nova Promoters & Finlease (P) Ltd (ITA NO. 342 of 2011), the Hon ble Delhi High Court, which is the jurisdictional High Court, has held as below:

"We are aware of the legal position that at the stage of issuing the notice under Section 148 the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax at escaped assessment."

6.3 The assessment/re-assessment proceedings in this case for A.Y. 2017-18 pertain to period within four years from the end of relevant assessment years at the time of issue of notice, necessary sanction has to be obtained from Addl. Commissioner of Income Tax, in view of the amended provisions of section 151 w.e.f. 01.06.2015. The necessary sanction in this regard is being obtained separately from Addl. Commissioner of Income Tax, Range 1(1)(Intl Taxn.-01), New Delhi before the issue of notice u/s 148.

4. The undisputed facts revealed that NCDs amounting to Rs. 150,00,00,000/- were subscribed on 17.06.2014 by the assessee in a company name M/s Hindustan Power Projects P. Ltd. The assessee has also earned interest and that interest has been offered to tax in the assessment year 2015-16 and 2016-17 and the NCDs were redeemed in the month of September 2015 and October 2015 relevant to the assessment year 2017-18 and then transferred the funds from Deutesche Bank India, to J.P Morgan Bank in Singapore. The assessee has obtained form 15CB and filed form 15CA with regard to the said remittances to its J.P Morgan Bank account in Singapore.

5. From the above it is apparent that the assessee has only repatriated the amounts invested in the earlier years and hence, no taxability arises during the year. In the case of the assessee company, neither has any income accrued or arisen or is deemed to accrue or arise under that for the assessment year 2017-18 nor any claim has been under any DTAA. It is apparent that the Assessing Office has not examined the relevant records before them wherein the interest earned has been duly offered to tax.

6. Hence it can be concluded that there was no escapement of income during the year and hence, the notice issued u/s. 148 is considered to be *void ab initio* and consequently the assessment is treated as nullity.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 17/01/2024.

Sd/-	**Sd**
(Astha Chandra)	**(Dr. B. R. R. Kumar)**
Judicial Member	**Accountant Member**

Dated: 17/01/2024
NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI