IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1529/Mum/2023
(Assessment Year: 2018-19)

Comstar Mauritius Limited Agarwal Vijay and Associates, 503, Jolly Bhavan, No.1, New Marine Lines, Mumbai-400 020	Vs.	CIT (IT), 17th Floor, Air India Building, Nariman Point, Mumbai-400 021
(Appellant)		**(Respondent)**

PAN No. AAGCC1225Q

Assessee by	:	Shri K. Gopal, AR
Revenue by	:	Shri Manoj Kumar Sinha, DR

Date of hearing:	20.10.2023
Date of pronouncement :	11.01.2024

O R D E R

PER PRASHANT MAHARISHI, AM:

01. ITA No. 1529/Mum/2023 is filed by Comstar Mauritius Ltd (assessee / appellant) for A.Y. 2018-19 against the revisionary order passed by the Commissioner of Income Tax (IT), Mumbai-2 (the learned CIT) dated 30th March, 2023, under Section 263 of the Income-tax Act, 1961 (the Act), wherein it has been held that assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the Act) on 1st March, 2021, by the Asst. Commissioner of Income Tax, International Taxation, Circle 2(1)(1), Mumbai (the learned AO) is held to be erroneous in so far as it is prejudicial to the interest of the Revenue and assessment order was set aside directing the learned Assessing Officer to make a fresh assessment.

02. The issue for revision is granting of benefit of Article 13 (4) of India Mauritius tax Treaty to the Mauritius registered assessee company, having Tax Residency certificate , for sale of shares acquired in F Y 2007-08, sold in AY 2018-19 earning capital gain claimed as not chargeable to tax in India , accepted by ld AO, held to be erroneous and Prejudicial to revenue order , hence revised.

03. The assessee is aggrieved and has raised following grounds of appeal:-

> *"The following grounds of appeal are without prejudice to one another*
>
> *1. The learned Commissioner of Income Tax, International Tax, Mumbai 2 erred in passing order u/s 263 setting aside assessment order passed u/s 143(3) on 01.03.2021 to make fresh assessment.*
>
> *2. The learned Commissioner of Income Tax, International Tax, Mumbai 2 failed to appreciate that the order u/s 263 is without jurisdiction and bad in law.*
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> *3. The learned Commissioner of Income Tax, International Tax, Mumbai 2 failed to appreciate that the assessment order passed u/s 143(3) on 01.03.2021 was neither erroneous nor prejudicial to the interest of the revenue.*
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> *4. The learned Commissioner of Income Tax, International Tax, Mumbai 2 failed to appreciate that the learned Assessing Officer had made enquiries "which should have been made" before passing the assessment order.*
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> *5. The learned Commissioner of Income Tax, International Tax, Mumbai 2 erred in assuming jurisdiction without giving finding as to which or what inquiries or verification "which should have been made" were not made by the Assessing Officer before passing the assessment order.*
>
> *6. The learned Commissioner of Income Tax, International Tax, Mumbai 2 erred in passing the order u/s 263 ignoring the records*

of the case more specifically reason for picking the return of income for scrutiny, enquiry letter of AO dated 22.02.2021 and reply of the assessee dated 25.02.2021 which were part of assessment record and considered by the Assessing Officer before passing the assessment order on 01.03.2021.

7. The learned Commissioner of Income Tax, International Tax, Mumbai 2 failed to appreciate that the learned Assessing Officer had rightly held that LTCG on sale of shares is not liable to tax in India.

8. The assessee prays that:

i) The order u/s 263 may be set aside and cancelled; ii) It may be held that LTCG is not liable to income tax in India;

iii) The assessment proceedings may be stayed till the hearing and final disposal of the appeal;

iv) Recovery of disputed demand may be held in abeyance till the hearing and final disposal of the appeal;

v) Personal hearing may be granted;

vi) Any other relief your Honours may deem fit.

9. The assessee craves leave to add, alter, amend or delete any of the grounds of appeal."

04. Facts noted from the orders of the lower authorities shows that assessee is a non-resident foreign company based on Mauritius and is in the business of investment in securities. Assessee filed its return of income on 11 October 2018, declaring nil income. The return was picked up for scrutiny by issuing notice under Section 143(2) of the Act on 23 September 2019. The learned Assessing Officer noted that during the year assessee has sold Indian securities and earned capital gain on the same. Its income consists of gain on sale of such securities,

which has been claimed as exempt in view of Indo Mauritius Double Taxation Avoidance Agreement (DTAA). Accordingly, assessment order was passed accepting the return of income ₹ nil as assessed income by order dated 1 March 2021.

05. The learned CIT examined the records and noticed that assessee has earned long term capital gain of ₹724,17,60,629/- on sale consideration of ₹790,86,38,427/- on sale of 64441564 equity shares of face value of Rs 10 /- each of Comstar Automotive Technologies Pvt Ltd [an Indian Company] [being 99.87 % shareholding in that Indian company] acquired in F Y 2007-08 sold to Singapore VII TOPCO III PTE Limited [A company incorporated under the laws of Singapore] claimed as exempt as per Article 13 of Double Taxation Avoidance Agreement between India and Mauritius. The CIT perused [1] the questionnaire issued by the learned Assessing Officer and the submissions filed by the assessee, [2] return of income, computation of total income and the assessment records. Based on this examination, a show cause notice was issued under Section 263 of the Act on 25th January, 2023, holding that the learned Assessing Officer has not conducted any enquiry to ascertain whether the capital gain on sale of share claimed as exempt as per Article 13 was allowable or not in pursuance to note no.4 of the financial statements of the assessee company wherein it is mentioned that capital gain arising on disposal of shares by the Mauritius Company acquired on or after 1st April, 2017 and disposed off before 1st April, 2019, would be taxed in India at the rate of 50% of the applicable rate if the affairs of the Mauritian Company are not arranged with the primary purpose of taking benefits of the lower tax rate. Further, the Mauritius Company should pass main purpose test and a bonafide business test and it is not a Shell/ conduit company. The gain arising on shares acquired on or after 1st April, 2017 and transferred on or after April, 2019, will be taxed fully in India as per Indian tax laws. He further noted that there is nothing to show that the learned Assessing Officer has conducted any enquiry to ascertain whether the assessee passes main purpose test or bonafide business test or whether it is a shell/ conduit company or whether the affairs of the company have been arranged with the primary purpose of taking benefit of the lower tax rate. He further noted that

on examination on the balance sheet and profit and loss account for A.Y. 2018-19 it is prima facie seen that

i. No routine day to day expenses are claimed in the books of accounts to show that assessee is a genuine corporate entity and its day to day operations have been outsourced.

ii. The affairs of the company have been arranged with the primary purpose of taking benefit of the lower tax rate.

iii. The business activities of the assessee in substance is controlled and managed from outside Mauritius.

06. The explanation 2 was invoked and it was stated no enquiries were made by the learned Assessing Officer during the course of assessment proceedings and the learned Assessing Officer has failed to verify and examined the claim of the assessee accepting the long term capital gain as exempt and therefore, the assessment order passed is erroneous as well as prejudicial to the interest of the Revenue.

07. The assessee submitted a reply on 23 February 2023, claiming that

a. assessee is a foreign company incorporated on 8 February, 2007 under the Mauritius law;

b. it has office in Mauritius

c. Submitted copy of certificate of incorporation and change of name. It further stated that assessee holds category – I Global Business License (GBL) issued by Financial Services Commission, Mauritius.

d. assessee is a non-resident in India and also do not have any Permanent Establishment (PE) in India.

e. assessee is holding a valid tax residency certificate issued by Mauritius authorities. The assessee is also part of an international group, Visteon having business and interest across various countries.

08. On transaction , Assessee submitted that it has acquired 8,59,22,085 shares of Comstar Automative Technologies Private Limited in accordance with FDI regulation at a total cost of ₹20.39 million US Dollar during 2007. Out of the above 2,14,81,521 equity shares were bought back by Comstar India in December, 2007 itself. Accordingly, the assessee was left with 6,44,41,564 equity shares. These shares were sold to Singapore VII Topco III Pte. Ltd. and another non-resident company based out of Singapore. This sale took place in A.Y. 2018-19, consideration was partly payable in the year of sale and balance was payable in A.Y. 2021-22. The share purchase agreement was furnished during the course of assessment proceedings, as well as before the learned Commissioner of Income Tax. It was further stated that the funds to make the investment in India were obtained from Visteon International Holdings and Visteon Asia Holdings Inc., for which the assessee has issued 17,48,908 equity shares to these companies. Thus, it was claimed that assessee made investment in 2007, sold it in 2017, therefore, it was not a 'fly by night investment' but it is an investment with a business motive to invest in India. It was further claimed that capital gain arising to the assessee is not chargeable to tax in India according to Article 13 of the Double taxation Avoidance agreement between India and Mauritius. . The assessee also produced the application made under Section 197 of the Act, also form no.10F before the learned Assessing Officer.

09. It was claimed that notice under Section 143(2) of the Act was issued for the reason that tax was deducted at source on sale of shares by the purchaser, which has resulted in refund. In the return of income, assessee claimed exemption. The learned Assessing Officer vide letter dated 22nd February, 2021, questioned assessee about the exemption benefit claimed as per Double Taxation Avoidance Agreement, which was replied by the assessee on 25th February, 2021. It was claimed that the amendment in Double Taxation Avoidance Agreement does not apply as the shares were sold are purchase before 1 April, 2017. Thus, during the course of assessment proceedings, the claim of the assessee was completely verified and hence, the show cause notice under Section 263 of the Act is not proper. Assessee also stated that the main purpose test, bonafide business test, shell/conduit companies are the terms emerging from the amendment to the DTAA on or after 2017 onwards. Assessee also

explained the meaning and intent of such amendment. Assessee also stated that before ld AO several circulars on India Mauritius DTAA were submitted to show that investments prior to 1/4/2017 is grandfathered and India does not tax capital gain on sale of shares of Indian company held by Mauritius shareholders. Thus, it was claimed that where the acquisition of shares before 1st April, 2017, this amendment does not apply. It was also stated that the learned Assessing Officer made an enquiry, which was replied to on 25 February, 2021, that the shares are acquired before 1st April, 2017 and no further enquiry is called for.

010. Thus, assessee concluded that the shares were purchased before 1st April, 2017 by resident of Mauritius by producing the tax residency certificate and assessee is entitled to exemption of long term capital gain in accordance with the Provisions of Double Taxation Avoidance Agreement. It further stated that the assessee has claimed exemption in accordance with the unamended Article 13(4) and therefore, the Article 27A is not applicable. Further, the learned Assessing Officer has carried out the necessary enquiries, which could have been made, and therefore, the assessment order granting exemption to the assessee on long-term capital gain according to Article 13 is neither erroneous nor prejudicial to the interest of the Revenue.

011. The learned CIT after considering the explanation of the assessee held that

a. the learned Assessing Officer has not conducted any enquiry and has merely stated in Para no.4 that the assessee is entitled to exemption.

b. learned Assessing Officer accepted the submission of the assessee without conducting any enquiry on its own whether assessee is entitled to the benefit of Double Taxation Avoidance Agreement between India and Mauritius.

c. Ld AO has neither asked for any holding structure of the assessee nor the details of ultimate beneficial owners, was enquired into.

d. Further, the learned Assessing Officer has not looked into the fact that audited financial statements of the assessee does not show any routine expenditure with respect to the rent, electricity, water, etc.

e. The learned Assessing Officer also do not make any enquiry regarding the source of investment or application of funds received on sale of shares or substantial dividend payment made by the assessee company.

f. Ld AO has simply accepted whatever is stated in note no.4 to the financial statement of the assessee. The learned PCIT further held that the main 'purpose test' and 'bonafide test' are mentioned in the notes of the financial statement of the assessee company, which should have been verified by the learned Assessing Officer.

g. He further noted that the learned Assessing Officer has not even mentioned or quantified long term capital gain, which has been treated as exempt under the Double Taxation Avoidance Agreement.

Accordingly, the Commissioner of Income Tax was of the view that the order is a stereotype order, which has accepted simply what is stated by the assessee without making any enquiry to examine the genuineness of the claim. The learned CIT relied upon several judicial precedents and held that the order of the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Therefore, he set aside and directed the learned Assessing Officer to make a fresh assessment after giving assessee an opportunity of being heard. Thus, the order under Section 263 of the Act was passed on 30th March, 2023.

012. The assessee is aggrieved with the same and is in appeal before us.

013. The learned Authorized Representative briefly stated the facts referring to his paper book containing 416 pages. He referred to the copy of the notice dated 20th February, 2021, issued by the learned Assessing Officer, which is placed at paper book page no.30 to 31. He submitted that vide item no.1, the learned Assessing Officer asked the working of the long term capital gain and by item no.2 asked for the details of relevant benefits of double taxation avoidance

agreement claimed by the assessee and also to provide copy of tax residency certificate. The details of shares acquired and the details of shares sold along with the share transfer agreement were enquired by query no.3 to 5 of the query letter. According to SL no. 6, the details of the buyer of the share such as their balance sheet and profit and loss account were also asked along with the valuation report of the shares. He submitted that on 25th February, 2021, the assessee replied to the learned Assessing Officer wherein the certificate of incorporation tax residency certificate and GBL-1 license was shown to the learned Assessing Officer. The assessee also explained the acquisition of such shares in December, 2007 and also the details of sale of shares to a Singapore entity along with share purchase agreement. The assessee also categorically submitted that it does not have any permanent establishment in India. With regard to Indo-Mauritius Double Taxation Avoidance Agreement, it was stated that tax residency certificate issued is valid from 28th May, 2017 to 28th May, 2018. The assessee also produced the working of the capital gain and also explained that Article 13 exempt such gain as the shares were acquired on or before 1st April, 2017. The assessee also explained that the articles were amended with effect from 1st April, 2017 by the protocol dated 10th August, 2016 and applies to capital gain on sale of shares acquired after 1st April, 2017. The assessee also relied on the circular no.682 dated 30th March, 1994, Circular no.789 dated 13th April, 2000 as well as several judicial precedents stated that the capital gain is not chargeable to tax in India. However, it did not submit the annual accounts of the buyer stating that is part of Black Stone Group. It provided the valuation report of the company whose shares are transacted. Further, the tax residency certificate was shown wherein from 28th May, 2016 to 27th May, 2017 and from 28th May, 2016 to 27th May, 2018. The assessee was issued tax residency certificate. He referred to these certificates, which are placed at page nos.185 to 186 of the paper book. He further referred to page no. 236 of the paper book wherein the financial statements of the assessee for 31st March, 2008, are placed and it is stated that the assessee has acquired 8,59,22,085 equity shares of ₹10 each for the total consideration of ₹2,03,98,342/- USD representing 99.9% equity stake in Comstar Automative Technologies Private Limited. He referred to this to show that the shares were

acquired in the year ended on 31st March, 2008 and therefore, prior to 1st April, 2017. He further referred to letter dated 1st March, 2021, wherein details of the shareholders of the company along with their percentage of shareholding is submitted stating that Comstar International Limited holds 100% equity of the assessee. The activity of assessee is stated to be investment holding. It also submitted the name of the three directors of the assessee along with the details of its bank account with State Bank of India, Mauritius. He further submitted that the learned Assessing Officer also made a specific query about high refund of tax deduction at source which was explained by assessee as stating that assessee is a non-resident company holding tax residency certificate of Mauritius revenue authorities for the relevant period has sold the shares of Comstar Automative Technologies Private Limited to the Singapore company on which buyer has deducted tax at source but capital gain arising there from is exempt as per India-Mauritius Double Taxation Avoidance Agreement and therefore, the refund has arisen. Thus, he submitted that there is no absence of enquiry by the learned Assessing Officer but the learned Assessing Officer has made the detailed enquiry on examination of source of acquisition of these shares, the sale of shares, the ownership status of the assessee and also the applicability of double tax avoidance agreement. He also submitted that the assessee has made the complete disclosure and also explained that as the shares were acquired prior to 1st April, 2017, the amendment to the double taxation avoidance does not apply to the present transaction. Accordingly, he submitted that the learned Assessing Officer after detailed enquiry has categorically held that the capital gain arising on the sale of shares is not chargeable to tax in India according to Article 13 and therefore, the order is neither erroneous nor prejudicial to the interest of the Revenue.

014. Even otherwise, he submitted that the order under Section 263 of the Act passed by the learned CIT does not says that in the given circumstances what are those relevant enquiries that the learned Assessing Officer should have made but has failed to made. He therefore submitted that the revisionary order passed by the learned CIT (A) is not sustainable.

015. He further referred to the decision of the Hon'ble Bombay HC in MOIL India Ltd. v. CIT (2017) vs. CIT (2017) 396 ITR 244 (Bom.) and specifically referred to Para no.5 to support his case. He submitted that in the present case, the explanation of the assessee was so elaborate and detailed that the learned Assessing Officer is not expected to raise further queries as he satisfied about the exemption based on the material and information supplied. Thus, the order of the learned Assessing Officer is not erroneous. He therefore submitted that that the order of the learned CIT revising the order of the learned Assessing Officer is not sustainable in law

016. The learned Departmental Representative supported the order of the learned CIT and stated that the learned Assessing Officer has not applied his mind to the claim of the assessee for the exemption as per Article 3 of Double Taxation Avoidance Agreement but has accepted whatever has been submitted by the assessee would conducting in independent enquires. He therefore, submitted that the order of the learned CIT under Section 263 of the Act is correct and valid.

017. The learned Authorized Representative to support his contention further relied upon the decision of the Hon'ble Bombay High Court in case of bid services division Mauritius Limited Vs. Authority for Advance ruling dated 8th December, 2023 (2023) 148 taxmann.com 215 (Bom), wherein it is categorically held that wherein assessee being Mauritius company sold its shares and claimed the same as exempt in view of Article 13(4) and Article 27A of Double Taxation Avoidance Agreement which are applicable with effect from 1st April, 2017, does not apply where the investment as well as sale was made prior to 1st April, 2017 and the capital gain earned by the assessee could not taxable in India. He submitted that though in that case, the sale was also prior to 1st April, 2017, and acquisition also but the grandfathering provisions will apply if shares are acquired prior to 1st April, 2017, even if this will sold after 1st April, 2017. It was further stated that the issue is thus squarely covered in favour of the assessee even otherwise.

018. He submitted that the learned Assessing Officer has taken one possible view about the non taxability of such shares in India based on several circulars and

press release of CBDT and therefore, such a case the jurisdiction of revision under Section 263 of the Act does not exist.

019. We have carefully considered the rival contentions and perused the orders of assessing authority as well as revisionary authority. The brief fact shows that assessee is a company incorporated in Mauritius by CO no.68664-C1/ GBL-1 on 8th February, 2007, as per certificate of incorporation issued under Section 24 of the Companies Act, 2001 of Republic of Mauritius the original name of the company was Vistone International Holding (Mauritius Limited), which was changed by another certificate as per GBL license 1 to Comstar Mauritius Limited. The assessee was holding category 1 Global Business License pursuant to Section 72(6) of the Financial Services act, with effect from 8th February, 2007. The assessee was also issued tax residency certificate from 28th May, 2016 to 27th May, 2017 by certificate dated 29th August, 2016 and further from 28th May, 2017 to 27th May, 2018 by certificate dated 22nd May, 2017.

020. During the financial year 2007-08, the assessee has acquired 8,59,22,085/- equity shares of ₹10 each for consideration of US $ 2,03,98,342/- representing 99.9% stake in a Indian company namely Comstar Automative Technology Pvt. Ltd. During the same year Indian company has bought back 2,14,80,521/- equity shares of ₹ 10 each at a price of ₹20 per share at a total consideration of US $ 1,08,59,702/- resulting into gain of US $ 57,60,117/- on such buy back. Thus, Assessee company was left with 6,44,41,564 equity shares representing 99.9% stake in the Indian entity, which has the object of manufacture and sale of automotive components. These shares were sold by the assessee by entering into share purchase agreement dated 1st January, 2018, to Singapore VII TOPCO (III) Pte Ltd. a company incorporated under the laws of Singapore. The assessee has categorically stated in the agreement that assessee is the legally and beneficial owner of the above share. It was also stated that assessee is owned as subsidiary of ComstarBVI . Sale consideration was received of ₹790,86,33,427/- on which capital gain was worked out of ₹724,17,60,629/-. Based on the above transaction assessee filed its return of income on 11th October, 2018 at Rs nil claiming refund of tax deduction at source of ₹71,37,90,865/-. This has arisen because of the tax deduction made by the buyer under Section 195 of the

income Tax Act on sale consideration. When the return was scrutinized the learned Assessing Officer issued notice dated 22nd February, 2021, where the assessee was asked to [1] provide the working of long term capital gain, [2] claim of its exemption as per India-Mauritius double taxation avoidance agreement, [3] the copy of tax residency certificate,[4] detail of acquisition of shares along with bank statement and [5] the copy of balance sheet as well as details of shares sold along with the bank statement etc. [6] to provide share transfer agreement [7] annual accounts of the buyer and [8] valuation report of the company whose shares have been sold.

021. The assessee replied by letter dated 25th February, 2021, submitting all the details and explaining the transaction along with all the necessary details asked for. Justifying the claim for exemption under Article 30, the assessee specifically stated that if the shares are acquired prior to 1st April, 2017, then amended double taxation avoidance agreement as per protocol dated 10th August, 2016 does not apply. The assessee also explained that the shares were acquired in 2007 and therefore, Article 3A and 3B does not apply. The assessee also referred to Circular no.682 stating that the person resident of the Mauritius deriving capital gain on sale of shares of Indian companies will be taxable only in Mauritius and does not have liability for taxation in India. Circular no.789 dated 13th April, 2000, was also put to the attention of the learned Assessing Officer to show that wherever tax residency certificate is issued shall constitute a sufficient evidence for status of residency as well as beneficial ownership for applying the Double Taxation Avoidance Agreement . Assessee also placed reliance on the decision of UOI v. Azadi Bachao Andolan (2003) 263 ITR 706 and also relied up on several other judicial precedence. Regarding copy of the balance sheet and profit and loss account of the buyer of the shares assessee gave the brief background of the buyer that it is part of the Black stone group. The assessee also submitted the valuation report of Comstar Automotive Technologies Private Limited, the value of equity shares of ₹ 10 each was determined at ₹152.76 per share. The assessee also submitted on 1st March, 2021, the details of the shareholding of the company, brief description of business activities carried out by the assessee company, details of the directors of the company and details of bank account of the assessee company. Based on

this, the learned Assessing Officer passed the order accepting the claim of exemption of long term capital gain as per Article 13 of the Double Taxation Avoidance Agreement. However, the order passed by the learned Assessing Officer was cryptic and small but it is not the claim of the Revenue that all these details were not asked for and examined. It is beyond the control of the assessee that how an assessment order should be passed and even when the claim of the assessee is accepted, what are written in the assessment order. Admittedly, in the assessment order the learned Assessing Officer has categorically stated that assessee is entitled to benefit of Article 13 of the Double Taxation Avoidance Agreement. The learned CIT on examination of the record has held that the order of the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue. His view was that in the annual accounts of the assessee, assessee has put a note about income tax provisions stating the above taxation and mentioning the fact that how the companies holding GBL1 license are chargeable to tax in Mauritius and how the income of the assessee is chargeable to tax in India. It says that the company being the holder of category 1 global business license is liable to income tax in Mauritius on its taxable profit from its global income at the rate of 15%. The foreign source income are eligible for foreign tax credit. Thereafter after mentioning the provisions of Mauritius and India jurisdiction on income tax , reconciliation between the accounting profits for tax purposes along with book profit was made. In that assessee has made a provision at the rate of 15% applicable to the assessee company in Mauritius. Therefore, as the assessee has mentioned in that note the CIT has taken a view that the learned Assessing Officer failed to enquire about such taxability as per the provisions of Indian Income Tax and Indo Mauritius Double Taxation Avoidance Agreement. That particular note also says that the protocol would be applicable only if the shares are acquired after 1st April, 2017. Thus, it is not the case of the Revenue that the shares of the Indian entity were acquired by the assessee after 1st April, 2017. Against this, the annual accounts of the assessee clearly states that such shares were acquired in F.Y. 2007-08. It is not the case of the CIT that the tax residency certificate is as a result of fraud or illegal activities. Therefore, The learned CIT also does not doubt that assessee is holding tax residency certificate. It is also not the case of the learned CIT that

tax residency certificate of the assessee is not valid in view of the same other information. The amendment to the Double Taxation Avoidance Agreement limiting the benefit of profit or gains on sale of shares in the hands of the Mauritius entity as per Article 13 (3B) and 27(A) would apply with effect from 1st April, 2017. The press release of Central Board of Direct Taxes dated 29th August, 2016, has expressly provided for grandfathering of investment prior to 1st April, 2017. It specifically says that the protocol provides for source based taxation of capital gain arising from alternation of shares acquired on or after 1st April, 2017 in a company resident in India with effect from F.Y. 2017-18. It further says that simultaneously investment made before 1st April, 2017, have been grandfathered and will not be subject to capital gain tax in India. Thus, claim of exemption granted by the learned Assessing Officer based on the above information is clearly in accordance with the press release dated 29th August, 2016 issued by the CBDT. The learned CIT has nowhere stated that the assessment order passed by the learned Assessing Officer is not in consonance with the above, Therefore We hold that the assessment order passed by the learned Assessing Officer granting benefit of Article 13 to the assessee on shares acquired prior to 1st April 2017, is after making due enquires and further same is also made in accordance with the press release of Central Board of Direct Taxes , hence, cannot be considered to be erroneous insofar as it is prejudicial to the interest of the Revenue. In view of this, we quash the revisionary order passed by the learned CIT under Section 263 of the Income-tax Act, 1961.

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

Order pronounced in the open court on 11.01. 2024.

Sd/-	Sd/-
(SANDEEP SINGH KARHAIL)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 11.01. 2024
Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai