



Direct Tax

March 01, 2023

The Delhi High Court in the case of Blackstone Capital Partners (Singapore) VI FDI Three PTE. LTD. V/s The Assistant Commissioner of Income Tax (International Taxation), holds that Department cannot go beyond the Tax Residency Certificate and deny Treaty Benefits.





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The Petitioner-Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. acquired equity shares of Agile Electric Sub Assembly Private Limited, a company incorporated in India ("Agile") in two tranches, i.e. on 16th August, 2013 and 31st October, 2013.

During the year under consideration, i.e Assessment Year 2016-17, the Petitioner sold all the equity shares of Agile to Igarashi Electric Works Limited ("Igarashi") and other parties on 30th July, 2015.

The Petitioner electronically filed its return of income for the Assessment Year 2016-17 on 29th September, 2016. In terms of the said return of income, the Petitioner claimed that the gains earned by it on sale of Agile shares were not taxable in India by virtue of Article 13(4) the Double Tax Avoidance Agreement entered into and subsisting between India and Singapore ("India-Singapore DTAA") based on the Tax Residency Certificate ('TRC'). In its return of income, the petitioner made all the requisite disclosures with regard to the investment and sale of shares like the Petitioner is a non-resident in India and majority of its Directors were residents of Singapore.

The Petitioner's return of income was processed under Section 143(1) of the Act with no demand, on 8th October, 2016.

The Department reopened the case of the Petitioner for the AY 2016-17 vide notice dated 31st March 2021. The case of the department was that Petitioner was not eligible for the treaty benefit of non-taxability of capital gain in India under the India-Singapore DTAA as it was controlled and managed in USA and that it had negligent/not operated in Singapore.

The Hon'ble Court was of the view that the Petitioner was holding a valid TRC exhibiting the Petitioner is tax resident of Singapore and therefore it is sufficient evidence to claim the benefit of capital gain under the India-Singapore DTAA. The Department cannot go behind the TRC issued by other jurisdiction. Accordingly, there was no reason to believe income chargeable to tax has escaped assessment. In the absence of same, reopening notice was quashed.



The relevant extract of the Judgement reads as under:

93. Accordingly, this Court is of the view that the respondent-revenue cannot go behind the TRC issued by the other tax jurisdiction as the same is sufficient evidence to claim treaty eligibility, residence status, legal ownership and accordingly there is no capital gain earned by the petitioner liable to tax in India. Even the clarificatory press release dated 1st March, 2013 issued by the Finance Ministry pursuant to the 2013 amendment makes it clear that a TRC is to be accepted and tax authorities cannot go behind it. Further, since on the basis of repeated assurances by the Government of India which have been upheld by the Apex Court, the petitioner had invested in India, the respondent is estopped from arguing to the contrary.

94. Keeping in view the aforesaid findings, this Court is of the view that no income chargeable to tax has escaped assessment in the present case. In Indu Lata Rangwala (supra), this Court has held that reopening of assessment based on the return of income must show 'reasons to believe' that income chargeable to tax has escaped assessment.

The relevant portion of the said judgment is reproduced hereinbelow:-

"35.8 it will be open to the Assessee to contest the reopening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment."