IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1760/Del/2022
Assessment Year: 2017-18

Tyco Electronics Singapore Pte Limited, TE Park-22B, Doddenakundi 2nd Phase Industrial Area, Whitefield Road, Bengaluru – 560 048, Karnataka.	Vs	DCIT, Circle Intl. Taxation 3(1)(1), Delhi.
PAN: AADCT9910C		
(Appellant)		(Respondent)

Assessee by	:	Shri Ajay Vohra, Sr. Advocate & Ms Somya Jain, CA
Revenue by	:	Shri Vizay B. Vasanta, IT-DR & Shri Anshul, Sr. DR

Date of Hearing	:	05.07.2024
Date of Pronouncement	:	05.09.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the final assessment order dated 23.06.2022 passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred as 'the

Act'), by Assessing Officer, Circle Int. Taxation 3(1)(1), Delhi (hereinafter referred to as the Ld. AO).

2. On hearing both the sides it comes up that the assessee has claimed to be engaged in the business of trading of electromechanical relays, wire and wireless equipment, high performance polymeric products, highly specialized energy-related products and other electrical and electronic and electronic components. The return of assessee was picked for complete scrutiny and AO had made addition of Rs. 211,61,53,235/- in the draft assessment order. The AO had denied assessee, being a tax resident of Singapore, to be eligible for the benefit as provided by the India-Singapore DTAA [Article 13(4)] and therefore, taxed the capital gain on sale of shares of an Indian company. Assessee had claimed that being a tax resident of Singapore, assessee is covered by the beneficial provisions of the India-Singapore DTAA (Article 11) and accordingly, interest income received from Compulsory Convertible Debentures (CCD) could not be taxed under the provisions of the Act. Further, AO had applied the tax as per rates of the Act as against the beneficial rate, claimed by the assessee, as per India-Singapore DTAA.

2.1 Against same the assessee approached DRP and filed objections. The plea of assessee before DRP was that the AO has erred in disregarding the Tax residency certificate (TRC) and other relevant documents furnished by the Company to support the fact that it is entitled to the beneficial provisions of the India-Singapore DTAA. Further that the AO has erred in not appreciating the facts as disclosed by the Company through a declaration duly signed by the director of the Company furnished during the course of its assessment proceedings and the company duly satisfies Article 24 (Limitation of Relief clause) of India-Singapore DTAA.

2.2 The DRP, has taken into consideration the objections and law cited and held as follows;

> *"DRP Directions-*
>
> *Objection no. 2 to 9 pertains to allowability of benefits to the assessee under the India- Singapore DTAA. The assessee has shown income from interest to be charged at beneficial rates as well as capital gains exempt under the benefits of India-Singapore DTAA. Assessee has submitted TRC and a self-serving declaration by the director of the company and has also claimed that benefits of the treaty had been allowed in the previous years.*

During the assessment as well as DRP proceedings assessee submitted above referred documents and return of income in India. AO asked various documents to ascertain the facts and allowability of benefits under the treaty. However, the assessee did not furnish the requirement documents. Relevant portion of the assessment order is reproduced below:

"Further, on perusal of the ITR filed by it for the year under consideration, it is seen that it has claimed Rs. 211,61,53,235/- as Long Term Capital Gain exempt under Article 13 of the DTAA. Therefore, vide notice 09.08.2021, assessee asked to furnish material evidence in the form of financial statements, operating expenses, tax returns etc. filed by it in its country of residence to substantiate that it was engaged in real and continuous business activities in Singapore. However, the assessee did not respond to the same. Thereafter, vide notice dated 18.09.2021 the assessee was asked to show cause as to why it should not be held ineligible for the treaty benefits under the DTAA in the absence of any details pertaining to its economic substance. In response dated 21.09.202, the assessee merely provided as under:

- *The interest received by the Company is duly offered to tax in India. However, the capital gain arising on account of transfer of shares of TE Connectivity Global Shared Services India Private Limited ('TEGSSIPL') is exempt from tax as per Article 13(4) of India- Singapore DTAA.*

- *A copy of TRC*

- *Assessee company has adequate substance in Singapore and all the adequate requirements with respect to 'Limitation of Relief' clause under Article 24 of the India-Singapore DTAA are thoroughly met.*

- *A copy of declaration as furnished by director of Company"*

Further, the assessee filed a single page purportedly from its financial statements pertaining to 2020 (and not the year under consideration) to support its claim of being engaged in real activities in Singapore.

4. During the proceedings, the assessee company was also asked to substantiate its claim of LTCG. In response, the assessee merely quoted the DTAA and stated that such LTCG was exempt as per the DTAA, in turn implying that the benefits provided some sort of blanket relief to taxpayers from providing any justification or documentation whatsoever of amounts claimed therein. This understanding of the provisions in the DTAA is grossly misplaced. In order to claim a benefit under Article 13, the onus is on the assessee to provide adequate documents in support of is claim"

From the details above it is clear that assessee has not submitted the detail/documents required by the assessing officer. As such he has not discharged the onus cast upon him and is claiming the benefit just on the basis of the documents referred above. He has further relied upon the CBDT circular no. 789 of 13.04.2000 and Apex Court order in the case of ***Union of India v/s Azadi Bachao Andolan (263 ITR 706).***

The claim of the assessee that TRC is the final authority for determining the allowability of benefits under the DTAA is not correct. Apex Court in the case of ***Vodafone International Holding v/s Union of India ([2012] 17 taxmann.com 202 (SC)*** *has considered this aspect along with CBDT circular no. 789 of 13.04.2000 and Apex Court order in the case of* ***Union of India v/s Azadi Bachao Andolan (263 ITR 706).*** *The court has and observed that colorable devices used for tax evasion as dealt in the case of* ***McDowell & Co. Ltd. v. CTO [1985] 22 Taxman 11 (SC)*** *are outside the scope of above circular/case. Thus, TRC cannot be held as the final requirement for availing the benefits under DTAA and the revenue can go beyond to investigate any device used for tax evasion. In accordance with this legal matrix AO had asked for details/documents from the assessee which were not furnished either during*

the assessment proceedings or DRP proceedings. In the absence of such details/documents there is no infirmity in the order of the AO denying benefits to the assessee.

As far as applicability of principle of consistency/res-judicata , as mentioned by the assessee it's a settled legal principle that res-judicata is not applicable for tax proceedings. Moreover, Hon'ble Delhi High Court in the case of ***Krishak Bharati Cooperative Ltd. ((2012) 23 taxmann.com 265)*** *has held as under with regard to principle of consistency:*

"This Court notices that there cannot be a wide application of the rule of consistency. In Radhasoami itself, the Supreme Court acknowledged that there is no res judicata, as regards assessment orders, and assessments for one year may not bind the officer for the next year. This is consistent with the view of the Supreme Court that "there is no such thing as res judicata in income tax matters" ***(Visheshwara Singh v. Commissioner of Income Tax AIR 1961 SC 1062).*** *Similarly, erroneous or mistaken views cannot tetter the authorities into repeating them, by application of a rule such as estoppel, for the reason that being an equitable principle, it has to yield to the mandate of law. A deeper reflection would show that blind adherence to the rule of consistency would lead to anomalous results for the reason that it would engender the unequal application of laws, and direct the tax authorities to adopt varied interpretations, to suit individual assesses, subjective to their convenience, a result at once debilitating and destructive of the rule of law. A previous Division Bench of this Court, in* ***Rohitasava Chand v. Commissioner*** *of had held that the rule of consistency cannot be of inflexible application."*

In view of the above discussion all the above grounds are

dismissed."

3. The ld. AR has primarily relied on the submissions made before the DRP while the ld. DR has relied the orders of DRP.

4. After taking into consideration the material on record and the submissions, we are of the considered view that the Tax Residency Certificate, even if it is not a conclusive evidence of a tax residency of an entity, it certainly is a statutory evidence and the burden is on the Revenue to establish from the facts and circumstance that the entity has been formed and operated in a manner that the only intention was to take benefit of the tax treaty without there being actual intention of an economic activity. As for this proposition we rely a co-ordinate bench decision in case of **Tiger Global Eight Holdings, Mauritius vs Dcit Intl. Taxation Circle 3(1)(1), New decided on 26 July, 2024 vide ITA No.2345/Del/2023** and in which one of us, the judicial member, was also in quorum has held as follows;

> *"10. After considering the rival contentions, it comes up that the appellant is admittedly a resident of Mauritius and there is a TRC issued in favour of the assessee by the treaty partner. As with regard to the consequences of holding a TRC, we are of the considered view that circular number 682/1994 and circular no. 789/2000 of Board, along with*

the judgment of Hon'ble Supreme Court of India in the case of Azadi Bachao Andolan (supra) and others and Vodafon (supra), sufficient lay down that the TRC is a statutory evidence of the residential status and even if it is not considered conclusive evidence, the onus shifts on the Assessing Officer to establish by evidences that except for holding the TRC, the entity is a conduit, created and run for treaty shopping."

4.1 The order of DRP before us, mentions that the assessee had failed to establish before the AO that the entity was not formed for tax evasion. There is no finding of the AO or the DRP as to if any inquiry was independently conducted to rebut the statutory evidence of tax residency.

5. If we appreciate the draft assessment order, it also puts the burden on the assessee that the assessee has failed to conclusively establish its eligibility for exemption of taxability of LTCG in India on sale of shares, that the treaty benefits in the case of the assessee were accordingly withdrawn and the provisions of tax were made applicable. Thus, we are of the considered view that at first instance the initial burden was discharged by the assessee by filing the statutory evidence of tax

residency in the form of TRC, but, the same was not rebutted by any inquiry or evidence by the AO.

6. We further find that before the DRP, the assessee had given a detailed submission putting across the claim of the assessee on the basis of various factual aspects and evidences. However, the DRP has not considered the same at all. Copy of the synopsis is available at page 84 of the paper book and as we appreciate the same it comes up that the assessee had pleaded that during the year under consideration, as part of global restructuring, the Company sold 10,37,030 shares held in TE Connectivity Global Shared Services India Private Limited ('TEGSSIPL') to a 3rd party on December 21, 2016. The said transfer of shares resulted in long term capital gains (held for more than 24 months) for the relevant AY. However, the Company was not liable to pay any tax on the capital gains as the same was tax exempted under Article 13(4) of India-Singapore DTAA ('DTAA').

6.1 It was further pleaded that the Assessee's business is managed and controlled in Singapore. All the board meetings and shareholders meetings are held in Singapore and all the key decisions relating to business are taken in Singapore.

6.2 It was also pleaded that as per Article 24A ('Limitation of Benefit') of India-Singapore Tax Treaty, *"A shell or conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State." "A resident of a Contracting State is deemed to be a shell or conduit company if its annual expenditure on operations in that Contracting State is less than S$200,000 in Singapore or Indian Rs.5,000,000 in India.".* In this context assessee submitted that the Assessee has incurred total expenditure of USD 660,281 and USD 2,266,177 in the financial years 2016 and 2017 respectively which shows it has significant business operations/activities in Singapore.

6.3 We find that AO has not found any fault in this proposition. Once this is admitted, it cannot be alleged that the Company is not a resident in Singapore and that it has no taxable existence in any other country. We find substance in the plea that without finding where the residence of the Assessee, it cannot be denied the treaty benefits. Further we appreciate the stance of the assessee that the company was incorporated in the year 1996

and the relevant investments were made by the Assessee in the year 2012 (which is 16 years after incorporation of Company).

6.4 It was also pleaded that the Assessee is an actual operating entity and is conducting business on a regular basis. The audited financials for the year 2017 reveals, it has generated revenue from sale of goods amounting to USD 2,472,828 (in '000). Further, The Assessee has employed 164 number of employees during the relevant year. The name of the employees was enclosed as Annexure 4. Assessee also pleaded that Singapore's Economic Development Board has also recognized the Company the Asia Pacific headquarters and the regional trading hub in 2016 for a period of 10 years. These aspect needed indulgence of the DRP, however, without making any enquiry the DRP has sustained the conclusion of AO.

6.5 It was also pointed out that the Company has been consistently filing its return of income in India and has been availing the treaty benefits with respect to such income for all such years. The AO has not denied the treaty benefits in any of such years. We are of considered view that without assigning any

reasons for drifting from the rule of consistency the DRP could not have sustained the draft addition.

7. The aforesaid submissions of the assessee seems to have been completely left out of consideration by DRP and these submissions sufficiently establish that the transaction which the AO has alleged to be out of tax evasion and treaty shopping was, in fact, a long-term investment decision by an entity which has sufficient managerial and operational structure to run an entity based in Singapore.

8. Thus the grounds as raised deserved to be sustained. Accordingly the appeal is allowed.

Order pronounced in the open court on 05.09.2024.

Sd/-	Sd/-
(DR. B.R.R. KUMAR) ACCOUNTANT MEMBER	(ANUBHAV SHARMA) JUDICIAL MEMBER

Dated: 05th September, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi