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COMMISSIONER OF INCOME TAX (IT) vs. MORGAN STANLEY MAURITIUS COMPANY LTD.

HIGH COURT OF BOMBAY

AKIL KURESHI & SARANG V. KOTWAL, JJ.

INCOME TAX APPEAL NO.1835 OF 2016

Mar 19, 2019

(2019) 104 CCH 0365 MumHC

(2019) 176 DTR 0413 (Bom), (2019) 308 CTR 0139 (Bom), (2019) 413 ITR 0332 (Bom)

Legislation Referred to

Section

Case pertains to

Asst. Year-

Decision in favour of:

Assessee

Income—Capital receipt—Assessee filed return of income—During assessment proceeding, AO noted that assessee had received additional sum upon allotment of shares as compared to what was originally envisaged—AO held that said additional sum was a revenue receipt and therefore, taxable in assessee's hands—ITAT held that assessee had not entered into any negotiations with M/s. O and transferred shares as per a scheme that was approved by SEBI—Assessee had not advanced any sum to M/s. O and had not received any interest from it for delayed repayment of principal amount—Thus, additional consideration received by assessee from M/s. O was not penal interest and was part of original consideration hence, same was not taxable—Held, a sum which resulted into additional receipt to assessee, was part of offer for sale of shares made by assessee—Reason for increasing offer by said sum might be on account of delay in issuance of shares, nevertheless, same was nothing but part of sale price of share—Revised offer which company announced for issuance of shares quoted price which included additional component—Said component was embedded in share price and could not be seen as an interest on delayed payment on price of share—This amount of was part of sale price of share and would retain same character as original price of share—Thus, receipt relatable to this component was thus clearly a capital receipt—Revenue's appeal dismissed.

Held

A sum of Rs.16/- per share which resulted into additional receipt of Rs.2.20 Crores to the Assessee, was part of the offer for sale of shares made by the Assessee. The reason for increasing the offer by the said sum of Rs.16 per share may be on account of delay in issuance of the shares, nevertheless, the same was nothing but part of the sale price of the share. The revised offer which the company announced for issuance of the shares quoted the price of the

share at Rs.2,100/-. This included the additional component of Rs.16/- per share. Looked from any angle thus, the shares were sold @ Rs.2,100/- per share. The component of Rs.16/- per share was embedded in the share price. This component cannot be seen as an interest on delayed payment on price of the share. This amount of Rs.16/-, thus, was part of the sale price of the share and would retain the same character as the original price of the share. The receipt of Rs.2.20 Crores relating to this component of Rs.16/- per share was thus clearly a capital receipt.

(Para 8)

Conclusion

Additional component arises from revised offer made the company is part of the sale price of the share and will retain the same character as the original price of the share and was thus clearly a capital receipt.

In favour of

Assessee

Cases Referred to

Genesis Indian Investment Company Ltd. in ITA/2878/Mum/2006 dated 14/08/2013

Counsel appeared:

Tejveer Singh for the Petitioner.: Sunil M. Lala, Karen D'Souza, i/b India Law Alliance for the Respondent.

P.C.:

1. This Appeal is filed by the Revenue, challenging the Judgment of Income Tax Appellate Tribunal ('Tribunal', for short). Following question is raised by the Revenue.

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in holding the compensation received by the appellant from Oracle Global (Mauritius) Ltd. for delay in payment of proceeds of shares tendered under the open offer includible in Capital Gains as against Interest Income ?"

2. The Respondent - Assessee is a limited company. Facts leading to this Appeal may be noted from the Judgment of the Tribunal in which it is recorded as under :

"We have heard the rival submissions and perused the material placed before us. We find that an open offer was made by Oracle to the share holders of I-flex at the price of Rs.1,475/- per share, that the open offer indicated that additional offer of Rs.11.35 per share was to be payable to the share holders, that as per the letter of open offer the additional consideration per share was to be paid due to delay in making the open offer and dispatch the letter of the offer based on the time line prescribed by SEBI, that later on the consideration of open offer was revised to Rs.2,084/- per share, that the additional consideration for delay was revised to Rs.16/- per share, that the open offer letter and public announcement indicated that a revised offer of Rs.2,100/- per share (including additional consideration of Rs.16/-) was to be payable for the shares tendered by the share holders under the open offer, that in response to the open offer the assessee tendered its holding of 13,97,879 shares of I-flex, that it received Rs.2,89,77,45,900/-, that the said sum included additional consideration of Rs.2.20 Crores

3. The Assessee thus received additional sum of Rs.2.20 Crores upon allotment of shares as compared to what was originally envisaged. The Revenue contends that this additional sum of Rs.2.20 Crores @ Rs.16/- per share, was a revenue receipt and therefore, taxable in the hands of the Assessee.

4. The Tribunal, by the impugned Judgment, while allowing the Appeal of the Assessee on this ground, held and observed as under :

"We have heard the rival submissions and perused the material placed before us. We find that an open offer was made by Oracle to share holders of I-flex at the price of Rs.1,475/- per share, that the open offer indicated that additional offer of Rs.11.35 per share was to be payable to the share holders, that as per the letter of open offer the additional consideration per share was to be paid due to delay in making the open offer and dispatch the letter of the offer based on the time line prescribed by SEBI, that later on the consideration of open offer was revised to Rs.2,084/- per share, that the additional consideration for delay was revised to Rs. 16/- per share, that the open offer letter and public announcement indicated that a revised offer of Rs.2,100/- per share (including additional consideration of Rs.16/-) was to be payable for the shares tendered by the share holders under the open offer, that in response to the open offer the assessee tendered its holding of 13,97,879 shares of I-flex, that it received Rs.2,89,77,45,900/- that the said sum included additional consideration of Rs.2.20 crores.

In our opinion, the basic issue to be decided is to determine as to whether the amount of Rs.2.20 crores rendered by the assessee as additional consideration is taxable or not ?

While going through the page Nos. 117 and 119 of the Paper Book, we find that the offer letter contains two schedules original and revised, that the revised schedule contains the details of additional consideration to be paid by Oracle. In our opinion, it cannot be treated as penal interest or interest for late payment of consideration by Oracle. We find that initially the additional consideration was fixed at Rs.11.35 per share, but, because of the delay in making the open offer and dispatch the letter of the offer, same was later enhanced to Rs.16.00 per share. Thus, there was increase in the offer price of the shares. It is a fact that the regulatory authority i.e. SEBI had approved the transaction, that the transaction could not be completed in due time because of certain reasons, that Oracle had revised the offer price. Considering all these factors, we are of the opinion that additional consideration received by the assessee is part and parcel of the total consideration. It cannot be segregated under the heads 'original sale consideration' and 'penal interest received from Oracle'. The business world is governed by its own rules and conventions. If considering the time factor Oracle decided to increase the share price in the offer letter it has to be taken as a part of original transaction. It is noteworthy that in the original offer interest @ Rs.11.35 per share was offered by Oracle. After considering the delay in dispatch letter and other relevant factors if it decided to increase the interest @ 16 per share it was a business decision. The assessee had no control over the decision making process of Oracle. If we see the transaction from the debtor/creditor angle it is clear that there was no such relationship between the assessee and Oracle. The assessee owned shares of I-flex and in response to the open letter by Oracle it decided to sell the shares-it was a pure and simple case of selling of shares. The assessee had not entered into any negotiations with Oracle and transferred the shares as per a scheme that was approved by SEBI. The assessee had not advanced any sum to Oracle and had not received any interest from it for delayed repayment of principal amount. In short, the additional consideration received by the assessee from Oracle was not penal interest and was part of the original consideration. Hence, same is not taxable. Ground no. is decided in favour of the assessee."

5. The Tribunal, in the said Judgment, also relied on its earlier decision dated 14/08/2013 in case of **Genesis Indian Investment Company Ltd. reported in ITA/2878/Mum/2006** in which somewhat similar issue had come up for consideration.

6. Learned Counsel for the Revenue, in addition to making independent submissions for admission of the Appeal, pointed out that the decision of the Tribunal in the case of Genesis Indian Investment Company Ltd. (*supra*) has been challenged by the Department in Income Tax Appeal No.610 of 2014 and such Appeal has been admitted.

7. On the other hand, learned Counsel for the Assessee opposed the Appeal contending that the Tribunal has correctly applied the legal principles on the undisputed facts. The decision of the Tribunal in the case of Genesis Indian Investment Company Ltd. (*supra*) was merely cited for

support. Independently also, the Tribunal has come to conclusion in favour of the Assessee. Learned Counsel submitted that there are differences between facts in the case of Genesis Indian Investment Company Ltd. (*supra*) and the present case and therefore, admission of the Department's Appeal in case of Genesis Indian Investment Company Ltd. (*supra*), would not mean that the present Appeal also must be admitted.

8. Having heard the learned Counsel for the parties, undisputed facts are that the sum of Rs.16/- per share which resulted into additional receipt of Rs.2.20 Crores to the Assessee, was part of the offer for sale of shares made by the Assessee. The reason for increasing the offer by the said sum of Rs.16 per share may be on account of delay in issuance of the shares, nevertheless, the same was nothing but part of the sale price of the share. The revised offer which the company announced for issuance of the shares quoted the price of the share at Rs.2,100/-. This included the additional component of Rs.16/- per share. Looked from any angle thus, the shares were sold @ Rs.2,100/- per share. The component of Rs.16/- per share was embedded in the share price. This component cannot be seen as an interest on delayed payment on price of the share. This amount of Rs.16/-, thus, was part of the sale price of the share and would retain the same character as the original price of the share. The receipt of Rs.2.20 Crores relating to this component of Rs.16/- per share was thus clearly a capital receipt.

9. We note that the facts in case of Genesis Indian Investment

Company Ltd. (*supra*) were somewhat different. Under the circumstances, we have proceeded to dispose of this Appeal, despite the fact that this Court has admitted the Revenue's Appeal in case of Genesis Indian Investment Company Ltd. (*supra*).

10. No question of law arises. Income Tax Appeal is dismissed.

Customized Notes
