

ITAT : REVENUE FAILED TO ESTABLISH MAURITIAN COMPANY AS A "CONDUIT," BUT TRC IS ADEQUATE FOR CAPITAL GAINS EXEMPTION.

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Veg 'N' Table [TS-657-ITAT-2023(DEL)]



Facts of the case

The present case, adjudicated by the Income Tax Appellate Tribunal (ITAT) in Delhi, revolves around the application of Article 13(4) of the India-Mauritius Double Taxation Avoidance Agreement (DTAA). The Assessee, Veg 'N' Table, a Mauritius-based investment holding company, had sold shares of an Indian company before April 1, 2017, and claimed a long-term capital gains exemption under the India-Mauritius DTAA.

The Revenue disputed the claim, contending that Assessee was a conduit company established with the intent of tax avoidance. The Revenue sought to deny the treaty benefits on this basis, leading to a complex legal battle.

Assessee's contention

Assessee's primary argument rested on the provisions of the India-Mauritius DTAA. They emphasized that they had acquired the shares of an Indian company before the crucial date of April 1, 2017.

As per Article 13(4) of the DTAA, capital gains from the sale of shares acquired before this date are exempt from taxation in India. Assessee asserted that they were entitled to this exemption.

Furthermore, assessee pointed out that they held a valid Tax Residency Certificate (TRC) for the relevant assessment year.

They argued that the TRC issued by the competent authority in Mauritius should determine their tax residency status, in line with legal precedents such as the Azadi Bachao Andolan case and the Blackstone Capital Partners case.

The Assessee vehemently denied the allegations of being a conduit company set up for tax avoidance, asserting that the Revenue's claims were unsubstantiated and lacked cogent evidence.

Revenue's contention

The Revenue's central argument was that Assessee was indeed a conduit company and had been established as part of a tax avoidance arrangement. They raised several points to support this claim:

-Lack of Economic Substance: The Revenue contended that Assessee had no economic substance and no commercial rationale could be attributed to its creation. It was alleged

that the company had not conducted any operating business activities during the relevant assessment years.

-Beneficial Ownership: The Revenue argued that there was a clear lack of beneficial ownership at the level of Veg 'N' Table.

-Commercial Rationale: According to the Revenue, there was no commercial rationale for establishing Assessee in Mauritius.

-Control and Management: The control and management of Assessee were not present in Mauritius, as per the Revenue's contentions.

In summary, the Revenue sought to deny the treaty benefits to Assessee by alleging that the company was a conduit for tax avoidance, despite holding a valid TRC.

Held

The ITAT's decision in the Assessee's case is significant for several reasons:

The case underscores the importance of the Tax Residency Certificate (TRC) issued by the competent authority of a specific country in determining the tax residency of an entity. The TRC carries considerable weight in tax matters.

The ITAT decision reaffirmed legal precedents like the Azadi Bachao Andolan case and the Blackstone Capital Partners case, emphasizing that TRC holders are entitled to treaty benefits unless substantial evidence proves otherwise.

While the Revenue could have invoked the General Anti-Avoidance Rule (GAAR) and the Limitation of Benefit (LOB) clause under Article 27A of the India-Mauritius DTAA, they did not do so. This decision serves as a reminder that tax authorities should apply relevant provisions of the law consistently.

AMRG Take

In conclusion, the Assessee case highlights the need for a rigorous examination of the facts and evidence before making allegations of tax avoidance. Without concrete evidence, claims of conduit companies or tax avoidance arrangements may not withstand legal scrutiny, and the taxpayer's rights under international tax treaties can prevail. This case serves as a precedent for the importance of following established legal principles in tax matters and respecting the validity of TRCs.