

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Shri Kul Bharat, Judicial Member
&**

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2164/Del/2023 : Asstt. Year: 2017-18

AEP Investments (Mauritius) Ltd., Apex House, Bank Street, Twenty Eight, Ebene, Mauritius 72201 (APPELLANT)	Vs	The ACIT Circle Int Tax 1(1)(1), Delhi (RESPONDENT)
PAN No. AAMCA 7431 Q		

**Assessee by : Sh. Ajay Vohra, Sr. Adv.
Shri Divyanshu Agrawal, Adv.
Revenue by : Sh. Vizay B. Vasanta, Sr. DR**

Date of Hearing: 07.12.2023

Date of Pronouncement: 17.01.2024

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the assessee against the order of Assessing Officer dated 29.03.2023 for the A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal are as under:-

1. *That on the facts and in the circumstances of the case and in law, the order passed under section 147 read with section 144 and section 144C of the Act is beyond jurisdiction, bad in law and void ab initio.*

2. *That on the facts and in the circumstances of the case and in law, the directions issued by the Ld. Dispute Resolution Panel ('DRP') is non est and invalid in absence of Document Identification Number ('DIN').*

3. That on the facts and in the circumstances of the case and in law, the final assessment order passed in conformity with invalid directions of DRP is, therefore, invalid and barred by limitation.

4. Without prejudice to the above grounds, on the facts and in the circumstances of the case and in law, the assessing officer has grossly erred in holding that the entire investment of INR 28,82,35,290 made by the Appellant towards subscribing to equity shares in Skeiron Renewable Energy Private Limited be treated as undisclosed business income earned in India and should be taxed at the rate of 40% as per the provisions of the Act.

5. Without prejudice to the above grounds, on the facts and in the circumstances of the case and in law, the assessing officer has grossly erred in holding that the entire investment of INR 67,73,52,950 made by the Appellant towards subscribing to Compulsorily Convertible Debentures in Skeiron Renewable Energy Private Limited be treated as undisclosed business income earned in India and should be taxed at the rate of 40% as per the provisions of the Act.

6. That on the facts and in the circumstances of the case, the assessing officer erred in alleging that "It is understood that the entire investment has been made from income earned/accrued in India during the year under consideration" purely on conjecture and surmises, without bringing any evidence on record in support thereof.

7. That on the facts and in the circumstances of the case, the assessing officer erred in law in levying interest under section 234A of the Act of INR 28,40,45, 112.

8. That on the facts and in the circumstances of the case, the assessing officer erred in law in levying interest under section 234B of the Act of INR 31,32,85,050.

9. That on the facts and in the circumstances of the case, the assessing officer has erred in initiating penalty proceedings under section 270A of the Act.

10. That on the facts and in the circumstances of the case, the assessing officer has erred in initiating penalty proceedings under section 271F of the Act.

3. M/s AEP Investments(Mauritius) Limited. (AIML) is a company incorporated in Mauritius on 15.07.2008. The Company is set-up under the laws of Mauritius as an investment holding company for making investments and holding them on a long-term basis. The Assessee is a tax resident of Mauritius as per Article 4 of the India-Mauritius Double Taxation Avoidance Agreement (India-Mauritius DTAA'). It holds a valid Tax Residency Certificate (TRC') issued by the Mauritius Revenue Authority (MRA). As part of its investment holding activity, a key investment focus of the Assessee is environmental services, including renewable energy, waste management, water treatment, energy efficiency, pollution control and prevention, and carbon programs. In this regard, the Assessee since incorporation has made investments in various countries such as India, China, Mauritius, Singapore, Hong Kong etc.

4. During FY 2016-17, the Company has invested an aggregate amount of INR 96,55,88,240 for subscribing to 2,88,23.529 equity shares and 6,77.35.295 CCDs of Skeiron Renewable Energy Private Limited ('Skeiron) (a private limited company incorporated in India), at a price of INR 10 per equity share and CCD. Considering that the Assessee is a tax resident of Mauritius and holds a valid TRC issued by the MRA and Form 10F for FY 2016-17, it is eligible to claim benefits under the India-Mauritius DTAA to the extent it is more beneficial than the provisions of the Act. Accordingly, the capital gains earned by the Assessee for the FY 2016-17 is covered under "Article 13 - Capital Gains" of the India-Mauritius DTAA. In terms of Article 13(4) of the India-Mauritius DTAA, the capital gains earned by

the Assessee on the sale of equity shares (acquired prior to 1 April 2017) in Skeiron, shall be taxable only in Mauritius. Accordingly, there are no tax implications in the hands of the Assessee in India in connection with the capital gains earned by the Assessee during the FY 2016-17.

5. During the year under consideration assessee has made foreign remittance to the tune of Rs. 28,82,35,290/- to Mauritius. Based on the information pertaining to foreign remittances notice, u/s. 148 has been issued by the Revenue Authorities.

6. At ground no. 6 of the appeal the assessee has questioned the issue of notice u/s. 148 of the Income Tax Act.

7. We have examined the reasons recorded by the Assessing Officer before issue of notice u/s. 148 of Act. The same are as under:-

(Annexure A)

Reasons of reopening in case of AEP Investment (Mauritius) Ltd. for
AY 2017-18, PAN -AAMCA7431Q

The assessee, AEP Investment (Mauritius) Ltd PAN - AAMCA7431Q, has not filed return of its income for the assessment year 2017-18. It is also observed from the E-filing portal that the assessee has filed its ITR only for AY 2019-20 and AY 2020-21.

2. Information available in ITS-AIR details was analyzed and it was observed that the assessee, during the financial year 2016-17 relevant to A.Y. 2017-18 has made following

S.No	Transaction Amount (Rs./-)	Category
1	28,82,35,290	Remittance to a non-resident or to a foreign company

3. It is pertinent to mention that though the assessee has made large transactions, the assessee has chosen not to file return of its income for the relevant year. Therefore, it appears that the assessee is carrying on some activity which has resulted in generation of income, but the income has escaped assessment as no ITR has been filed by the assessee.

4 Thus, the above facts indicate that the assessee has not filed return of income for the year under consideration. As per the provisions of Section, 139, which is reproduced below, every individual with taxable income is required to compulsorily file return of income :-

"139. (1) Every person,—

(a) being a company [or a firm]: or

(6) being a person other than a company [or a firm], if its total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of its income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :""

5. In the above background and after examining the available information, I have reason to believe that income of Rs. 28,82,35,290/-as mentioned above during the FY 2016-17 (relevant to AY 2017-18) has escaped assessment within the meaning given in Section 147 of the Income-tax Act. Therefore, I am of the belief that it is a fit case for the issuance of notice u/s 148 of the Act and

initiation of proceedings u/s 147 of the Act. I propose to issue notice u/s 148 of the Act for AY 2017-18 and to assess or reassess the above mentioned income and also any other income chargeable to tax which has escaped assessment and which comes to my notice subsequently in the course of proceedings under section 147 of the Act.

It would be worthwhile to submit here that in the case of Rajesh Jhaveri Stock Brokers Pvt Ltd Vs ACIT(2007) 291 TTR 500/161 Taxman 316 (SC), Hon'ble Supreme Court has held that:

"All that is required for the Revenue to assume valid jurisdiction u/s 148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."

It is also pertinent to mention that on similar lines, in the case of CIT v. Nova Promoters & Finlease (P) Lid (ITA NO. 342 of 2011), the Hon'ble Delhi High Court, which is the jurisdictional High Court, has held as below:

"We are aware of the legal position that at the stage of issuing the notice under Section 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax at escaped assessment."

I am satisfied that the eligibility conditions for initiation of proceedings u/s. 147 as laid down by the Act and relevant case laws are adequately fulfilled in the present case.

6. Approval u/s 151 (2) of the Income-tax Act, 1961 is requested to issue a notice u/s 148 of the Act, in order to initiate proceedings u/s 147 of the Act for AY 2017-18.

8. The relevant portion of the reasons recorded are,

- *It is pertinent to mention that though the assessee has made large transactions, the assessee has chosen not to file return of its income for the relevant year.*
- *Therefore, it appears that the assessee is carrying on some activity which has resulted in generation of income, but the income has escaped assessment as no ITR has been filed by the assessee.*

9. On examination of the record before us, we find that the assessee has remitted an amount Rs. 28.82 crores and also filed form 15CA from which the Revenue came to know the information pertaining to the remittances.

10. From the above reasons nothing could be deciphered as to how the AO came to conclusion of escapement of income. The case has been reopened just because of assessee made **remittances which is from the sale of investments** made by the assessee. Though the merits of the matter is relevant at the time of reopening, the Assessing Officer at the stage of reopening is required to form only a *prima facie* belief and satisfaction that income chargeable to tax has escapement assessment. In this case we don't find any such *prima facie* satisfaction from the reasons recorded. Hence it can be concluded that there was no escapement of income during the year and hence, the notice issued u/s. 148 is considered to be *void ab initio* and consequently the assessment is treated as nullity.

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

Order Pronounced in the Open Court on 17/01/2024.

Sd/-
(Kul Bharat)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 17/01/2024

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI