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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 205/2024

PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC along with Mr. Pratyaksh Gupta, Mr. Anant Mann, JSCs and Mr. Parshuram, Adv.

versus

MODTECH INDUSTRIES ..... Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Uma Shankar, Adv.

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\+ ITA 207/2024

PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC along with Mr. Pratyaksh Gupta, Mr. Anant Mann, JSCs and Mr. Parshuram, Adv.

versus

MODTECH INDUSTRIES ..... Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Uma Shankar, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**O R D E R**

% **16.05.2024**

**CM APPL. 18983/2024 (490 Days Delay in Refiling) in ITA 205/2024**
**CM APPL. 19778/2024 (490 Days Delay in Refiling) in ITA 207/2024**

1. Bearing in the mind the disclosures made, the delay of 490 days in re-filing the appeals is condoned.

2. Applications shall stand disposed of.

**ITA 205/2024 & ITA 207/2024**

3. Having heard Mr. Bhatia, learned counsel appearing in support of the appeal and Mr. Aggarwal, learned senior counsel appearing for the respondent, we take note of the following findings on facts which were recorded by the Assessing Officer [‘**AO**’].

> “3. During the search of locker No. l945R1810247 with ICICI Bank, Defence Colony, New Delhi in the name of Shri Takshay Bansal, three Business Transfer Agreements dated 11-06-2014 executed by Dorset Kaba Security Systems (P) Limited with the following entities were found and seized. Perusal of the same reveals that the amount of Rs.l98 crore has been paid by the Dorset Kaba Security Systems (P) Limited to these entities on account of business transfer consideration on slump sale basis:-
>
> | | | |
> |---|---|---|
> | 1. | M/s Modtech Industries [partner-ship firm] | Rs.156 crore |
> | 2. | M/s Mars Industries (P) Limited | Rs. 34 crore |
> | 3. | M/s Dorset India (P) Limited | Rs.8 crore |
> | | | Rs.198 crore |
>
> 3.1 The relevant portion of the clause of BTA between Modtech Industries and Dorset Kaba Security System (P) Limited regarding sale consideration is reproduced hereunder:-
>
> > "4.1 Purchase consideration
> > 4.1.1 In consideration of the sale/transfer of the undertaking, the total sum, subject to the provisions of Article 4.1.2 below, payable by the Purchaser to the Sellers amounts to Rs. 1,560,000,000 [Rupees one Billion Five Hundred and Sixty Million only] less the Net Debt and the restricted cash and bank balances, as at the Closing Date ("Purchase Consideration") and shall be paid by the Purchaser to the Sellers in accordance with this Article 4. An illustration of the manner in which Purchase Consideration shall be calculated is set out in Schedule XXIII".
>
> 4. Pursuant to the above clause of BTA dated 11-06-2014, Dorset Kaba Security System (P) Limited paid the settled amount of sale consideration to Modtech Industries as detailed below:-

| Date of payment | Amount | Account no. of ICICI Bank In which amount credited |
|---|---|---|
| 01-08-2014 | Rs.154,99,60,000 | 165305000068 |

From the above facts, it is clearly established that BTA dated 11-06-2014 between Modtech Industries and Dorset Kaba Security System (P) Limited was performed in accordance with its words and letter and in true sense of the agreement.

xxxx xxxx xxxx

9. From the plain reading of the above facts and circumstances, it can easily be inferred that the subsequent transactions of Modtech Industries, Mars Industries (P) Limited and Dorset India (P) Limited are a "colorable device" entered into with the sole motive of tax evasion. The reasons for this are listed down as under:

9.1 The BTA dated 11.06.2014 between M/s Dorset Kaba Securities Systems (P) Limited and M/s Modtech Industries for the sale of business undertaking of M/s Modtech Industries was executed for a consideration of Rs.156 crore whereas the alleged BTA dated 01.04.2014 between M/s Mars Industries and M/s Modtech Industries for the sale of business undertaking of M/s Modtech Industries is executed for a consideration of Rs.2.29 crore only. It has not been clarified by the assessee as to why another agreement dated 11-06-2014 was executed with Dorset Kaba Security System Limited whereas the assessee by virtue of alleged BTA dated 01-04-2014 has already sold its undertaking on slump sale basis to Mars Industries (P) Limited for a consideration of Rs.2.29 crore. Moreover such a huge difference of Rs. 153.71 crore [156 crore minus 2.29 crore] in the sale consideration for the transfer of same business undertaking is not only surprising but at the same time it clearly indicates tax evasion device designed by the assessee to make this transactions colourable.

9.2 As per account statement of ICICI Bank, available on records, M/s Modtech Industries received payment of Rs.l56 crore from Dorset Kaba Security System (P) Limited on 01-08-2014; much before the filing of amalgamation petition in High Court. Out of this receipt of Rs.l56 crore, Modtech Industries advanced loans of Rs.l49 crore to its partners which as per the balance sheet is still receivable as on 31-03-2016. This amount has clearly been beneficially utilized by the partners on account of slump sale which was actually carried out on 11-06-2014 without any payment of due taxes by deploying a dubious scheme of tax evasion. Had this amount been actually related to Mars Industries (P) Limited, then why it was given as loan to its partners.

9.3 By virtue of alleged BTA dated 01-04-2014, Modtech Industries has sold its undertaking on slump sale basis to Mars

Industries (P) Limited for a consideration of Rs.2.29 crore. Petition for amalgamation of Mars Industries (P) Limited with Dorset India Limited was filed before the Hon'ble High Court on 19-11-2014 i.e. much after the date of execution of Business Transfer Agreement with Mars Industries (P) Limited. During the amalgamation proceedings, the facts regarding execution of separate BTAs dated 11-06-2014 by Dorset Kaba Security System (P) with Modtech Industries and Mars Industries (P) Limited were not disclosed before the Hon'ble High Court and as such amalgamation order has been got done by concealing the material facts of the case.

9.4 If the alleged BTA dated 01-04-2014 is in fact entered on that date (which of course is not the case) then while entering into BTA dated 11-06-2014, Modtech Industries concealed material fact from Dorset Kaba Security Systems (P) Limited to the effect that its undertaking has already been taken over by Mars Industries (P) Limited on slump sale basis by virtue of alleged BTA dated 01-04-2014 for a consideration of Rs.2.29 crore. Thus in that case also there is clear malafide.

9.5 Further Mars Industries (P) Limited also concealed material fact from Dorset Kaba Security Systems (P) Limited to the effect that a petition for amalgamation with Dorset India (P) Limited w.e.f 01-04-2014 is being filed before the Hon'ble High Court which was subsequently done on 19-11-2014.

9.6 The crux of the matter is that the three slump sales as per three seized BTAs dated 11-06-2014 were carried out for which the respective considerations of Rs.l56 crore, Rs.34 crores and Rs.8 crore were received by M/s Modtech Industries, M/s Mars Industries (P) Limited and M/s Dorset India (P) Limited respectively. The complete transaction including the receipt of payments and further deployment of such sale-consideration was completed by August/September 2014. The completed transaction thus resulted into respective capital gains on 11-06-2014 in the hands of the three parties as per the three seized BTAs dated 11-06-2014. Notably, there is no whisper about or impact of the alleged BTA dated 01-04-2014 between Modtech Industries and Mars Industries (P) Limited in these three seized BTAs or on the actual receipt and enjoyment by respective parties of the sale consideration. Obviously, there was no such alleged BTA in existence till at least August 2014. However, this *fait accompli* of having to pay respective capital gains tax was attempted to be thereafter undone by designing a dubious scheme involving a series of genuine-looking transactions. First step was to create an artificial BTA dated 01-04-2014 by back-dating the document. Needless to mention, the alleged BTA dated 01-04-2014 between Mars and Modtech is self-serving, is fraudulently executed between related/known parties and is in complete contrast to seized subsequent BTAs dated 11-06-2014 and is also serving the sole purpose of evading taxes on already completed transactions. Thus, "consideration" of Rs.2.29 crores mentioned in alleged BTA dated 01-04-2014 is not only ridiculously low, but is completely meaningless. Second step in the series was to execute "the scheme of amalgamation" which also is not only mis-conceived but an un-acceptable attempt on the part of the assessee to obtain the amalgamation order by actively concealing and mis-representing critical and material facts before Hon'ble High Court.

The real transaction depicted by BTAs dated 11-06-2014 must be given as legal implication for tax purpose.

10. In view of the above, it is clearly established that Modtech Industries has received amount of Rs.l56 crore from Dorset Kaba Security System (P) Limited in pursuant to the Business Transfer Agreement dated 11-06-2014. Accordingly the amount of Rs.l56 crore received from Dorset Kaba Security System (P) Limited is considered for taxing in the hands of the assessee as long capital gain arising out of slump sale u/s 508 of the Income
Tax Act. The computation of capital gain is made as under:-

| | |
|---|---|
| Sale consideration [as per BTA dated 11-06-2014 | Rs. 156,00,000/- |
| Less: net worth of the undertaking as shown in computation of income | Rs. 2,29,07,236/- |
| | Rs.153,70,92,764/- |

I am satisfied that the assessee has concealed the particulars of its income by not declaring the income on account of Long Term Gains which arose resultant to the slump sale of its undertaking. Therefore, Penalty proceedings u/s 271(l)(c) of the Income Tax Act, 1961 for this offence are initiated separately.

[Addition:Rs.153,70,92,764/-]"

4. The Income Tax Appellate Tribunal ['**ITAT**'] while disposing of a set of appeals of the searched and non-searched entities has however, while dealing with the case of M/s Dorset Kaba Securities System (P.) Ltd. observed as follows: -

> "**Our Analysis:** On perusal of the aforesaid business transfer agreements, we have noticed that on the basis of business transfer agreement dated 11/06/2014 the original return of income have been filed by Dorset India Pvt. Ltd., as M/s Modtech Industries was taken over by M/s Mars India Pvt. Ltd. and further, M/s Mars India Pvt. Ltd. was amalgamated in M/s Dorset India Pvt. Ltd. and the said disclosures were made by M/s Dorset India Pvt. Ltd in its financial statements.

The capital gains on slump sale on the -basis of aforesaid agreements have been shown in the original return of income so filed by M/s Dorset India Pvt. Ltd. (**at pages 247, 248 to 249, 278, 280, 326 of PB - I)**. Dorset India Pvt. Ltd also e filed form no 3CEA (audit report relating to capital gain on slump sale) before Income Tax department and the said form no 3CEA is with reference to slump sale on the basis of Business transfer agreements dated 11/06/2014 **(at pages 253 and 255 of PB - I)**. The said fact of amalgamation and business transfer was also disclosed in the balance sheet by M/s DIPL including Goodwill arising as a result of Merger of M/s Mars India Pvt. Ltd. **(at pages 305, 315, 318 and 324 of PB-I)**.

Similarly, we have noticed that Page nos. 53 and 54 of Annexure A-2 (locker at ICICI) being copy of MOU made on 01.09.2014 and disclosure letters in reference to the purchase price consideration of the BTA executed between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Mars Industries Pvt. Ltd., and between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Dorset India Pvt. Ltd. in pursuance to BTA dated 11.06.2014, is nothing but recording the mutual consent of both the parties to BTA's to give effect to the said agreement and these documents are in relation to BTA's, the effect of which has been, as noticed above, had been duly taken in the books of accounts and original return of income filed by assessee company.

Thus, here again, we have no hesitation in holding that the four business transfer agreements dated 11/06/2014 forming part of satisfaction note are not incriminating in nature, as the said agreements are duly disclosed and its financial implication duly reflected in the return of income filed prior to recording of satisfaction note and also even prior to the date of search.

16. In so far as the submissions made by ld. CIT-DR, regarding seized documents having bearing on total income becoming incriminating documents automatically, we are not impressed with the arguments of Ld CIT DR, as the same goes contrary to the judgments of jurisdictional high court and Hon'ble Apex Court. And further, with reference to the order of assessment or even going by the order of learned CIT (A), the learned CIT DR was not able to point out any single document which was not disclosed by assessee prior to recording of satisfaction note and neither the judgments so relied by counsel of assessee were rebutted or contradicted by learned CIT DR. That further, we also find that the reliance placed on the judgment of SSP Aviation vs DCIT reported in 346 ITR 177 is also misplaced on facts, as after

considering the said judgment Hon'ble High Court of Delhi in a subsequent judgment in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612 has held as under:

> "**34.** *In SSP Aviation Ltd. (supra),* this Court had noted the difference between the provisions of Section 158BD of the Act and the provisions of Section 153C. Whereas Section 158BD referred to the satisfaction of an AO with regard to any "undisclosed income" belonging to a person other than the searched person, Section 153C(1) of the Act in contrast referred merely to the AO being satisfied that assets/documents seized during a search belonged to a person other than one searched, it is, thus, clear that it was not necessary for the AO, at the stage of recording the satisfaction under Section 153C to come to a conclusion that seized assets which belong to another person represent any undisclosed income. If the AO of a searched person is satisfied that an asset/documents seized belong to another person, he has a duty to forward the documents or the valuable assets seized to the AO of the person concerned; apart from doing so, the AO can do nothing more.
>
> **35.** The AO of the person other than the one searched also, is not, at the stage of issuing notice under Section 153C/153A of the Act, required to conclude that the assets/documents handed over to him by the AO of the searched person represent or indicate any undisclosed income of the Assessee under his jurisdiction. As explained in *SSP Aviation Ltd. [supra),* Section 153C only enables the AO of a person other than the one searched, to investigate into the documents seized and/or the assets seized and ascertain that the same do not reflect any undisclosed income of the Assessee (i.e a person other than the one searched) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the AO of the Assessee, are duly disclosed and reflected in the returns filed by the Assessee, no further interference would be called for. Similarly, if the books of accounts/documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the Assessee have been seized and handed over to the AO of the Assessee would not necessarily require the AO to reopen the concluded assessments and reassess the income of the Assessee.

**36.** The decision in *SSP Aviation Ltd. (supra)* cannot be understood to mean that the AO has the jurisdiction to make a reassement in every case, where seized assets or documents are handed over to the AO. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered, by the AO after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the Assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the AO to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an Assessee before commencing an enquiry under Section 153C of the Act, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the Assessee for the relevant assessment years.

**37.** As expressly indicated under Section 153C of the Act the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of Section 153A of the Act. The concluded assessments cannot be interfered with under Section 153A of the Act unless the incriminating material belonging to the Assessee has been seized.

**38.** As indicated above, in the present case, the documents seized had no relevance or bearing on the income of the Assessee for the relevant assessment years and could not possibly reflect any undisclosed income. This being the undisputed position, no investigation was necessary. Thus, the provisions of section 153C, which are to enable an investigation in respect of the seized asset, could not be resorted to; the AO had no jurisdiction to make the reassessment under Section 153C of the Act."

5. It is the aforesaid logic which led to the ITAT annulling the challenge which was raised in respect of the respondent-assessee.

6. Mr. Bhatia, however, would submit that the case which was set up by M/s Modtech Industries was clearly distinct from the position

which obtained in M/s Dorset Kaba Securities System (P.) and that the Business Transfer Agreements [‘**BTAs**’] and the transactions pertaining thereto were not even disclosed in the Return of Income which was filed.

7. This position is contested by Mr. Aggarwal who submits that no such argument was ever raised before the ITAT as would be evident from a reading of Paragraph 16 of the order of the ITAT.

8. However, in order to lay the controversy at rest, we request Mr. Bhatia to place the Return of Income which was submitted by M/s Modtech Industries by way of an additional affidavit on or before the next date fixed.

9. Let both matters be now called on 06.08.2024.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MAY 16, 2024/**RW