THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.02.2013

+ W.P.(C) 8295/2011

THE DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION), DELHI … Petitioner

versus

GOODYEAR TIRE AND RUBBER COMPANY ... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Abhishek Maratha, Ms Anshul Sharma
For the Respondent : Mr Percy J. Paradiwalla, Sr. Adv. with Mr H.R. Rao, Mr Mukesh Bhutani, Mr Rahul Yadav, Advs.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition has been filed by the department against the advance ruling order dated 02.05.2011 given by the Authority for Advance Rulings (A.A.R). The crux of the matter is that 74% shares of Goodyear India Limited were held by a USA company by the name of Goodyear Tire & Rubber Company. The said USA company has a 100% subsidiary in Singapore by the name of Goodyear Orient Company (Pte) Limited. Both the USA company as well as the Singapore company had approached the A.A.R. with respect to the tax liability of the proposed

transfer of the said 74% share-holding of the USA company in Goodyear India Limited Company to its 100% subsidiary in Singapore. The A.A.R. after examining the various provisions of the Income-tax Act, 1961 (hereinafter referred to as the 'said Act') has ruled that there would be no tax liability on either the USA company or the Singapore company.

2. One of the points considered by the A.A.R. was that the transfer of the 74% shares to the Singapore company, which was without any consideration, even if the same was for consideration would be exempted from income-tax in view of the specific provisions of section 10(38) read with Chapter VII of the Finance (No.2) Act, 2004 . We may point out that Chapter VII of the said Finance (No.2) Act, 2004 pertains to securities transaction tax. Section 97(13) of the said Finance Act defines 'taxable securities transaction' in the following manner:-

> "(13) "taxable securities transaction" means a transaction of –
>
> (a) purchase or sale of an equity share in a company or a derivative or a unit of an equity oriented fund, entered into in a recognized stock exchange; or
>
> (b) sale of a unit of an equity oriented fund to the Mutual Fund."

3. The charge of 'securities transaction tax' is given in section 98 of Chapter VII of Finance (No.2) Act, 2004, which, to the extent relevant, is quoted hereunder:-

> "98. On and from the commencement of this Chapter, there shall be charged a securities transaction

> tax in respect of the taxable securities transaction specified in column (2) of the Table below, at the rate specified in the corresponding entry in column in column (3) of the said Table, on the value of such transaction and such tax shall be payable by the purchaser or the seller, specified in the corresponding entry in column (4) of the said Table:"

4. Reading the said provisions together with section 10(38) of the said Act, it is apparent that income arising from the transfer of a long term capital asset, if it is an equity share in a company or a unit of an equity oriented fund, where the transaction of sale of such equity share is chargeable to securities transaction tax, then such income would be exempt. To put it in plain language, if income arises out of the transfer of a long term capital asset being an equity share in a listed company, the said income would be exempt under section 10(38) of the said Act. There is no doubt that the shares of Goodyear India Limited are listed shares and therefore even if a consideration had been charged for the transfer of the 74% share, the income arising therefrom would be exempt by virtue of the provisions of section 10(38) of the said Act.

5. This is the approach which has been taken by the A.A.R. to hold that neither the USA company nor the Singapore company would be liable to any tax in respect of the proposed transfer of the 74% share-holding in Goodyear India Limited. The A.A.R. also observed that for the same reason this was a complete answer to the revenue's argument that the transactions were part of a design of 'treaty shopping'. The argument of the revenue was that if the share-holding remained with the USA company and, subsequently, at some point of time the shares were

transferred, the income arising there from would be liable to taxation in terms of the said Act as well as the double taxation avoidance agreement between India and USA. Thus, according to the revenue, the transaction resulting in such capital gain would be taxed in both countries, that is, India and USA. But, having regard to the double taxation avoidance agreement between India and Singapore, the capital gain would only be taxed at Singapore and not in India. Thus, according to the revenue, the transaction was proposed to be entered into to avoid being taxed in India. As the A.A.R. has observed, a complete answer is provided by section 10(38) of the said Act.

6. For the forgoing reasons, we are of the view that no interference is called for with the ruling given by the A.A.R. We may also observe that we are not exercising any appellate jurisdiction and it is only our extra-ordinary jurisdiction under Article 226 of the Constitution of India which has been invoked by the revenue. We are, therefore, not required to examine the matter in all respects, as if it was an appeal before us. No illegality has been pointed out in the impugned ruling and for that reason also we refrain from interfering with the same.

7. The writ petition is dismissed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

FEBRUARY 27, 2013
kb