



Tax Flash News

5 January 2024

No reassessment proceedings in the case of the foreign company's capital account transaction of investment in shares of an Indian subsidiary as it did not give rise to any income

Recently, the Delhi High Court in the case of Angelantoni Test Technologies SRL¹ (ATTS) dealt with the issue of applicability of reassessment proceedings to a foreign company's capital account transaction of investment in shares of an Indian subsidiary. The High Court observed that investment in shares of the Indian subsidiary was a capital account transaction, and it did not give rise to any income. Thus, there was no question of escapement of income to invoke reassessment proceedings. Accordingly, the High Court set aside the reassessment order and the notice.

Facts of the case

- ATTS, a foreign company, invested in shares of its Indian subsidiary in accordance with applicable regulations. ATTS did not file a return of income as it did not earn any income from any source in India. ATTS claimed that the investment in shares of the Indian subsidiary was a capital account transaction.
- The tax department issued a notice under Section 148A(b), an order under Section 148A(d), and a reassessment notice under section 148 of the Income-tax Act, 1961.
- ATTS filed writ petition challenging the reassessment notice and the order. ATTS also challenged the legality and constitutional validity of Explanation 1 to section 148. ATTS contended that the transaction was capital account transactions which was incapable of generating any income. Further, there was no information or material to prove that the income had escaped assessment.

- The tax department contended that the notice under section 148A(b) was issued in accordance with the risk management strategy formulated by the Central Board of Direct Taxes (CBDT) in terms of explanation 1 to section 148. Further, the transaction was a consequence of round-tripping.

High Court decision

- It is a well-settled law that investment in shares in an Indian subsidiary could not be treated as 'income' as the same is in the nature of 'capital account transaction' not giving rise to any income. The High Court in the case of Nestle SA² held that the allegation of the tax department that the investment in the shares of an Indian subsidiary amounted to 'income', is flawed.
- The High Court further observed that the tax department was in contravention of the CBDT Instruction³ reiterating the view expressed by the Bombay High Court in the case of Vodafone India Services Pvt. Ltd.⁴ that no income arises on investment in shares since it is a capital account transaction. The Bombay High Court's decision was also accepted by the Union Cabinet and a press note⁵ was issued by the Press Information Bureau.

² Nestle SA v. ACIT [2019] 108 taxmann.com 237 (Del)

³ CBDT Instruction No. 2 of 2015, dated 29 January 2015

⁴ Vodafone India Services Pvt. Ltd. v. UOI [2014] 368 ITR 1 (Bom)

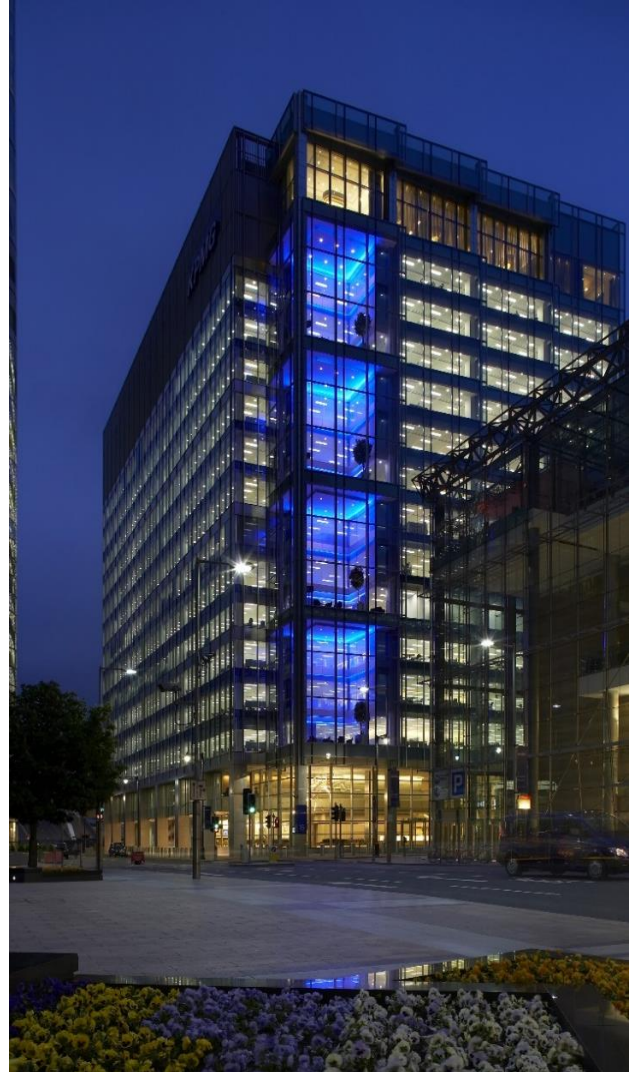
⁵ Press note dated 28 January 2015 - PIB

¹ Angelantoni Test Technologies SRL v. ACIT (W.P.(C) 15928/2023) – Taxsutra.com

- Further, the High Court in the case of Divya Capital One Private Limited⁶ observed that whether it is “information to suggest” under amended law or “reason to believe” under erstwhile law, the benchmark of “escapement of income chargeable to tax” still remains the primary condition to be satisfied before invoking powers under Section 147.
- Consequently, the High Court set aside the order issued under section 148A(d) and the reassessment notice issued under section 148⁷.

Our comments

This decision will help taxpayers who are fighting against the unnecessary reassessment notices issued in case of capital account transactions like investment in shares of an Indian company. The High Court reiterated that the condition of 'escapement of income chargeable to tax' remains the primary condition to be satisfied before invoking the provisions of reassessment.



⁶ Divya Capital One Private Limited v. ACIT [2022] 139 taxmann.com 461 (Del)

⁷The challenge to the vires to explanation 1 to section 148 is left open

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills Compound, N M
Joshi Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

kpmg.com/in

Follow us on:

kpmg.com/in/socialmedia



30 years
and beyond

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2024 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.