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

% *Date of Decision: 07.07.2025*

+ **W.P.(C) 17911/2024**

BRAY CONTROLS SOUTH EAST ASIA
PTE LTD

.....Petitioner

Through: Mr Ajay Vohra, Senior Advocate
with Mr Saurabh Bindal, Mr Revanth
Ashok and Ms Akshita Salampuria,
Advocates.

Versus

COMMISSIONER OF INCOME (TAX
INTERNATIONAL TAXATION) - 1 & ANR.Respondents

Through: Mr Ruchir Bhatia, SSC with Mr
Anant Mann, Mr P. Gupta and Mr
Abhishek Anand, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The Petitioner has filed the present Petition impugning an order dated 17.03.2023 passed by the learned Commissioner of Income Tax (International Transaction) Delhi-1 [CIT] under Section 264 of the Income Tax Act, 1961 [**the Act**].

2. The Petitioner [BCSAL] is a company incorporated under the laws of Singapore and is a tax resident of the said country. The Petitioner proposes to purchase shares of an Indian company, Bray Controls India Pvt. Ltd.



[**BIND**] from its affiliate, Bray International Inc [**BII**], which is incorporated under laws of the United States of America and is a tax resident of that country. In this context, the Petitioner had submitted an application seeking issuance of a Nil withholding tax certificate under Section 195(2) of the Act. The Petitioner also furnished (i) the audited financial statement of BIND for the last 3 (three) Assessment Years [**AY**], and (ii) returns of income of BIND for 3 (three) AYs 2018-19, 2019-20 and 2020-21. Additionally, the Petitioner also furnished a valuation report indicating the valuation of shares of BIND.

3. The Assessing Officer [**AO**] rejected the said request and issued a certificate directing that the tax be withheld at the rate of 10% of the total consideration.

4. It is the Petitioner's claim that the transaction would not result in any capital gains but a loss. According to the Petitioner, the cost of acquisition of the shares in the hands of BII was US \$ 23,122,670/-, which translated to ₹1,41,53,34,245/-. The petitioner also furnished a certificate to the said effect. The sale consideration of the subject shares of BIND were fixed at the cost of acquisition, albeit, in Indian currency, at the exchange rate prevalent at the material time. That is, at ₹1,41,53,34,245/-. However, the cost of acquisition of the subject shares at the current exchange rate translates to US \$ 19,139,071/-. Thus, according to the Petitioner, there would neither be any loss nor any gain in terms of the Indian currency. However, the sale transaction would result in a loss of US \$ 3,983,599/- in US dollars terms.



5. The AO passed an order dated 09.06.2021 declining to issue a Nil withholding tax certificate, *inter alia*, on the assumption that the Petitioner is seeking certain treaty benefits. However, it is the Petitioner's case that it is not seeking any treaty benefits. The certificate is sought on the basis that the proposed transaction results in a loss; therefore, the same would not involve any liability to pay tax.

6. The Petitioner filed a Petition under Section 264 of the Act seeking revision of the order dated 09.06.2021, whereby the AO had rejected the Petitioner's request for a Nil withholding tax certificate. The learned CIT accepted that the Petitioner was not claiming any treaty benefits. However, it found no fault with the AO's conclusion to decline the Nil withholding tax certificate as sought by the Petitioner. The learned CIT reasoned that the Petitioner had not submitted any valuation report as to the value of the shares on the date when the same were acquired. The learned CIT noted that the shares were acquired by BII at the rate of ₹100 per share but the valuation of the shares at the time of acquisition was not furnished. The learned CIT also noted that the proposed transaction entailed sale of shares of BIND at the rate of ₹100, but the valuation report indicated the Fair Market Value [FMV] of the shares at ₹50.25 per equity share (as on 31.10.2022). The learned CIT observed that the shares of BIND were unlisted and observed that the documents as necessary for ascertaining the capital gains had not been provided. The learned CIT concurred with the AO that tax ought to be withheld at 10% of the transaction value to protect the interest of the Revenue. The relevant extract of the impugned order setting out the findings of the learned CIT are reproduced below:



“6. Order & Findings:

I have gone through the order of ITO, Ward 1(1)(2), New Delhi dated 09.06.2021. I have also gone through the submissions of the assessee, comments of the Addl.CIT(IT), Range 1(1), New Delhi and the ITO, Ward 1(1)(2), New Delhi on the submissions of the assessee.

The AO has thoroughly given the findings in its order dated 09.06.2021 that the shares proposed to be transferred by the assessee were unlisted shares and the assessee had on its own claimed that that there would be capital loss on transferring shares of BIND (M/s Bray Controls India Pvt. Ltd) from BII (M/s Bray International Inc.) to BCSAL (M/s Bray Controls South East Asia Pte Ltd, therefore a nil TDS certificate should have been issued to it. However as per the order of the AO, the assessee neither furnished valuation report at the time of purchase of share of BIND nor furnished financials of seller (BII) and purchaser (BCSAL). The valuation report submitted at the time of original proceedings indicating fair market value of the shares of BIND at the time of selling pertained to F.Y 2020-21 which was not relevant as the valuation report was required for the year of purchase of shares and year of proposed sale of shares by the assessee. Further, in response to Notice u/s 264 of the Act, the assessee has filed latest valuation report dated 02.12.2022. However, as per reports of the Range Head and the AO, on perusal of latest valuation report of shares of “BIND” it is observed that FMV of shares has been estimated at Rs. 50.25/- per share. Further the seller of the shares i.e. M/s. Bray International Inc. (In short “BII”) and purchaser of these shares i.e. M/s. Bray Controls Southeast Asia Pte Ltd (in short “BCSAL”) has agreed to transact in this shares at Rs.100/-. Hence, fixing the share price of “BIND” at Rs. 100/-despite FMV of Rs. 50/- creates ambiguity about this transaction.

Further, as per applicant’s submission, the shares of “BIND” has been acquired by “BII” at Rs. 100/-per share during F.Y



2010-11 to F.Y 2016-17. However, the latest valuation report shows FMV of shares of “BIND” at Rs. 50/per share. No supporting evidence at the time of purchase of shares has been provided by the applicant.

Further, it is also observed that the assessee as mentioned above, neither furnished valuation report at the time of purchase of share of BIND by BII nor furnished financials of seller and purchaser either during original proceedings or now in the submission before undersigned alongwith the application u/s 264 of the Act. Further, here it is necessary to mention that as the shares of BIND are unlisted shares, those documents were required by the then A.O for ascertaining capital gains in this case and in absence of requisite details, exact liability of capital gains could not be determined by the AO. Therefore, as observed from the submissions of the assessee, reports of the AO, no new information or documents except a valuation report of share pertaining to 2022-23, has been filed by the applicant in the application u/s 264 of the Act as were filed by the assessee during the proceedings u/s 195 of the Act before the AO. In view of the reports of the Range Head and the AO and the material on record, after considering the submissions of the assessee, the application of the assessee u/s 264 of the Act is rejected.”

7. It is material to note that the only aspects which were required to be considered by the AO for considering the Petitioner’s Application for a Nil withholding tax certificate, are the value of the shares at which they are proposed to be transacted and whether the same would result in any capital gains.

8. For the purposes of Section 50CA of the Act, it may be necessary to examine the FMV of the shares. Mr Bhatia, learned counsel appearing for the Revenue submits that since the transaction has not been consummated as



yet, it would be necessary for the Petitioner to furnish the valuation report in respect of the current FMV of the shares in question.

9. Insofar as the value of the shares on the date of purchase by BII is concerned, the same is not required to be examined at this stage as BII had already acquired the shares pursuant to an earlier transaction, which is not the subject matter of enquiry in the relevant assessment year. The historical cost of acquisition cannot be re-worked for determining the capital gains that may arise from sale of the subject shares. The question whether the BII had acquired the shares of BIND at the FMV may be relevant for examining the transaction for acquisition of shares during the assessment year relevant to the previous year when they were acquired. However, the certificate sought by the petitioner is confined to the sale of the subject shares by BII to the Petitioner.

10. Mr Vohra, learned Senior Counsel submits that there is no difficulty in submitting a fresh valuation report as the FMV of the shares in question would have reduced on account of further losses incurred by BIND.

11. In view of the above, we set aside the impugned order and remand the matter to the learned CIT to consider afresh.

12. We, however, clarify that the only parameters required to be considered by the learned CIT at this stage are the historical costs at which the subject shares acquired by BII; the consideration at which the said shares are now proposed to be transferred to the Petitioner; and the FMV of the said shares computed in accordance with Rule 11UA of the Income Tax Rules, 1962.



13. The Petitioner shall furnish a fresh valuation report by an approved valuer for the aforesaid purpose within a period of four weeks from today setting out the FMV of the shares in question as on 31.03.2025, which the learned counsel agree would be the relevant proximate date be considered as a valuation date for the purposes of Rule 11UA of the aforesaid Rules. The concerned authority shall consider the same and shall issue a Nil withholding tax certificate if the proposed transaction does not result in any liability to pay tax.

14. The Petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 07, 2025
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Click here to check corrigendum, if any