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

Decided on: 24th April, 2026

\+ ITA 681/2025
\+ ITA 725/2025
\+ ITA 726/2025
\+ ITA 727/2025
\+ ITA 697/2025
\+ ITA 698/2025
\+ ITA 700/2025
\+ ITA 701/2025
\+ ITA 702/2025
\+ ITA 703/2025
\+ ITA 708/2025
\+ ITA 709/2025
\+ ITA 710/2025
\+ ITA 712/2025

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

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kr. & Mr. Rishabh Nangia, JSCs & Mr. Nikhil Jain, Adv.

versus

PRADEEP WIG
NEERA WIG
.....Respondents

Through: Mr. Sachit Jolly, Sr. Adv. with Ms. Shreya Jain, Mr. Gaurav Tanwar & Mr. Abhyudaya Shankar Bajpai, Mr. Sohum Dua, Advs

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

***Per* DINESH MEHTA, J. (ORAL)**

1. The captioned appeals have been filed by the Principal Commissioner of Income Tax, Central-1, against a common judgment and order dated

29.04.2025 passed by the Income Tax Appellate Tribunal, Delhi, Bench-'E', New Delhi *(hereinafter referred to as the 'Tribunal')* with respect to 14 appeals decided by the Tribunal, which were filed by the respondents-assessees for Assessment Year 2011-12 to 2017-18.

2. The basic question which is involved in these appeals is, as to whether the Assessing Officer (AO) was legally justified in taxing the rental income and capital gain arising out of properties owned by the company in which respondents were the shareholders.

3. Shorn of unwanted details, the facts relevant for the present purposes are that on 02.03.2017, a search was conducted at the residence of the respondents, who are husband and wife. During the course of search, the officers of the Department found certain papers containing details of expenditure incurred for upkeep, sale, purchase, renovation, maintenance furnishing and leasing of the house properties *viz.* Flat Nos. 53, 63 & 61 Eaton House, 39-40, Upper Grosvenor Street, London Wlk 2NG, owned by Carmichael Capital Limited (*hereinafter referred to as 'CCL'*), a company incorporated in British Virgin Islands.

4. Since all the shares of said company (CCL) were held by the respondents and their daughters namely, Mr. Pradeep Wig, Mrs. Neera Wig, Ms. Sonu Wig, Mrs. Neela Kothari and Ms. Gauri Wig having 20% shareholding each in the said company, (CCL) the Assessing Officer added not only the income from house property amounting to Rs.1,08,12,485/- but also the income from capital gains arising out of sale of the property to the tune of Rs.5,91,25,912/-; the same was however rectified to Rs. 3,70,84,034/-.

5. While framing the assessment for different years, the Assessing Officer recorded that the entire investment in the said company (CCL) was made by the respondents, who are residents of India. Though he found that the payments were made from their declared sources and under permitted Liberalized Remittance Scheme (*hereinafter referred to as 'LRS'*) of the Reserve Bank of India (*hereinafter referred to as* '*RBI'*) from time to time, he concluded that the respondents-assessees were the real beneficial owner of the company's assets and thus liable to pay tax under the Income Tax Act, 1961 *(hereinafter referred to as the 'Act of 1961')*.

6. The assessees' stand was that earlier there were five shareholders in the company holding equal shares at 20% each, namely, Mr. Pradeep Wig and Mrs. Neera Wig, and their daughters, Ms. Sonu Wig, Mrs. Neela Kothari and Ms. Gauri Wig. So far as Ms. Sonu Wig is concerned, she was an NRI during relevant period prior to becoming a British citizen and did not have any income in India and thus was not obliged to file any return of income in India.

7. The AO invoked Explanation 4 to Section 139(1) of the Act of 1961 and took into account the information received from the competent authorities of Singapore. He has taken a view that there is no difference in ownership of the company (CCL) and the ownership of properties of the company, having been proved by the data seized during the search. He further observed that the properties were owned by the assessees using the company-CCL only as a cover.

8. The assessees preferred an appeal before the Commissioner Income Tax (Appeals) *(hereinafter referred to as the 'CIT(A)')*, challenging the basic issue of assessing the company's income in their hands. Alternative grounds

with respect to calculation of capital gain and other grounds too were raised. The CIT(A) vide his order dated 26.02.2021, observed that the assessees had active involvement in connection with the purchase/sale of the properties and they had appointed nominee directors in CCL who had no say in the management of the estate of the company and thus rejected the assessees' appeals so far as the taxability of company's income in assessees' hands is concerned. He, however, allowed other grounds and gave some relief to the assessees.

9. Against the above-referred order dated 26.02.2021, the assessees, so also the Department preferred appeals before the Tribunal which were heard and decided by the common judgment and order dated 29.04.2025. The Tribunal allowed the appeals of the respondents for AY 2011-12 to 2017-18, so far as the issue under consideration is concerned. The common order of the Tribunal *qua* 14 appeals has been challenged by the appellant-Department under Section 260A of the Act of 1961.

10. While passing the order, the Tribunal held that the respondents were not the 'beneficial owners' of the property or assets of CCL and, therefore, neither any income arising from the property of the said company as capital gain nor any other income of the company such as rent or bank interest was assessable in the hands of the respondents-assessees or any of their family members who might have held shares in the said company.

11. Mr. Puneet Rai, learned Senior Standing Counsel for the Department, argued that the AO had pierced the veil and found that the respondents were the true and real owners and beneficiaries of the income and assets of CCL and the doctrine of 'substance over form' should be applied in order to demolish the device adopted by the respondents to avoid tax in India.

12. He argued that the expression "beneficial owner", as given in Explanation 4 to Section 139(1) of the Act of 1961 clearly brings within its fold the transactions carried out by the respondents. He also argued that since the respondents were beneficial rather true owners, the income from house property so also the capital gains on sale of property and other income earned by CCL at United Kingdom, is liable to be taxed in the hands of the respondents-assessees, who are indisputably the residents of India, more particularly when the money or investment in the shares of the company was originated and rather transmitted from India.

13. Mr. Sachit Jolly, learned Senior Counsel for the respondents on the other hand argued that the AO has introduced his own concept 'substance over form' and has made addition in the hands of the respondents, without there being any basis. While admitting that the shares in company (CCL) were held by the respondents, he pointed out that the amount towards share capital was sent through banking channels and remitted from India under permitted LRS of the RBI, and each remittance was approved by RBI.

14. Mr. Jolly added that said company took further loan from the banks in the United Kingdom and the purchased flat(s) and rental income was earned by the said company and the respondents-assessees had neither received rentals directly nor have they received any dividend.

15. He argued that the AO has failed to understand the basic concept of corporate existence, that a company is a separate legal entity from its shareholders. He argued that company's income can by no stretch of imagination be treated to be the income of its shareholders. He emphasised that so far as CCL is concerned, it had offered the rental income for tax and

had paid the applicable tax at each event, including any tax payable at the time of or after the sale of house property.

16. He argued that there is no provision under the Act of 1961 under which the rental income and income from capital gains earned by CCL can be taxed in the hands of the respondents-assessees, simply because they happened to be the shareholders of the company.

17. Heard learned counsel for the parties.

18. The way the transactions have been portrayed by the AO gives an impression as if, the respondents have adopted a ploy to avoid, if not evade, the tax under the Act of 1961. But if the factual matrix is examined in its entirety and from the lens of a common man or investor, it transpires that the respondents had invested in shares of the company namely CCL, registered under the provisions of law in the British Virgin Islands. The said company having obtained loan from the banks subsequently purchased properties and having earned rental income for three-four years, had sold the properties at a higher value. Hence, it is the company namely, CCL which earned rental income and generated gain for itself on account of appreciation in the value of the property it had purchased.

19. Since the company so also the properties are/were situate within the precincts of the United Kingdom, tax if any, is/was payable under the laws of the United Kingdom. The AO had taken it to be a device, essentially because the respondents happened to hold 100% shares of the said company. Whereas the Tribunal examined the entire material and has given detailed reasons in paragraph 45 to 48 of its order, which we deem it apt to reproduce hereunder:

> *"45. It can be further seen that the entire information about the investment in the overseas companies holding of properties*

by the overseas company in UK, purchased from its own capital received from the assessee and his family and bank loan borrowed from the HSBC Bank in UK and other relevant factors were well-known to the Revenue much before the date of search on 02/03/2017 as the statements u/s 131(1A) of the Act of the assessee and his family members were recorded by the Investigation Unit besides even prosecution notice dated 27/10/2015 had been issued by the Revenue alleging non-disclosure of the same in the returns. Thus actually no information at all was found during the course of search as to substantiate any addition in respect of the said information by relying on PCIT vs Abhisar Buildwell (P) Ltd [2023] 149 taxmann.com 399 (SC) dated 24/04/2023. The evidence relied by the Revenue by way of date sheet does not show the calendar events as mentioned in the assessment order do not contain any incriminating information to sustain additions because the calendar events just explain as to what the assessee did there or wished to be done there with no financial implications corroborated from any material found otherwise in search or post search enquiry. We find no substance in drawing a inference of incriminating material for the reasons assessee family was living for a few days in the property of the company Rather the ATED paid by the company is only for the reasons of keeping the dwelling vacant. Thus, in no manner the same can be considered as incriminating so as to initiate action against the directions of the Hon'ble Supreme Court in the case of Abhisar Buildwell (supra).

46. There is substance also in the contention of appellants/assessee that the Revenue did not find any single amount having being invested in those companies by anyone from undisclosed sources much less by the appellants/assessee. Thus, there was no purpose to impugn that the company was incorporated with an intention to avoid assessment of income of the properties overseas in the hands of the appellants/assessee. At the same time there is substance in the contention that the allegation of the Revenue, that the company was incorporated only for the purpose of acquiring the properties in UK falls on the face of it as the company

CCL, was incorporated on 9th March, 2005 whereas the first property was acquired in London by the said company on 14/02/2008 and both the properties had been sold on 04/08/2014 before even conceptualization of the BMA or the beneficial ownership provisions in the Income-tax Act w.e.f. AY 2016-17. Thus, the Revenue has no case to make any such allegation as at the time of incorporation of the company or acquiring the properties the concept of beneficial holders under the Income-tax Act was absolutely absent rather not concealed of.

47. Then we find that the 3 daughters of the assessee were majors and those shares were registered in their own names only with no beneficial interest of anyone else. No evidence has been brought on record by the AO that the daughters ever tried to exit from their respective interest in their shareholdings in favour of the assessee. It is also seen that Ms. Sonu Wig, one of the daughters of the assessee was an NRI rather became British citizen, holding a British passport since the year 2013 and was residing in the said property overseas off and on That only shows natural course of events and nothing incriminating

48. We are thus inclined to hold that the assessee/appellants were not the beneficial owner of any property or asset of CCL and therefore neither any income arising from the property of the said company as rent nor as capital gains and also the bank interest nor any other income of the company form any source, was assessable in the hands of the assessee or any family member who had never had any beneficial ownership or holding any beneficial interest in the assets of the company. Thus, the action of the both the authorities in considering the assessee Mr. Neeraj Wig and his spouse as the beneficial owners in equal proportions of the assets of the BVI company CCL. and then assessing all income from those assets of the said company from any source is illegal ab initio and is quashed in toto. All the amounts, assessed as income under the two respective Acts from any source or under any head, allegedly germinating from any of the properties/bank

accounts of and from the company are deleted in the hands of the assessee and his spouse as they are held to be not the beneficial owner of the assets of the company CCL at all In conclusion, this issue no. 1 is decided in favour of appellants/assessee and all the grounds of appeal of the assessee in this regard are allowed and all the grounds of appeal of the Department in this regard are dismissed."

20. We note that right since the judgment in the case of ***McDowell & Co. Ltd. v. CTO,*** reported in (1985) 3 SCC 230; ***Union of India & Anr. v. Azadi Bachao Andolan & Anr.***, reported in (2004) 10 SCC 1 upto ***Vodafone International Holdings BV v. Union of India & Anr.,*** reported in (2012) 6 SCC 613, there has been a consistent view of Hon'ble the Supreme Court that the Revenue cannot tax a subject without a statute to support and that every tax payer is entitled to arrange his affairs so that his taxes are as low as possible and he cannot be compelled to choose that pattern which will replenish the treasury.

21. What is tax evasion, tax avoidance and when the corporate veil can be lifted has been elucidated by Hon'ble the Supreme Court in the case of ***Vodafone International Holdings BV (supra).*** Recapitulation of relevant paragraphs of said judgment shall not be out of context:

"79. *When it comes to taxation of a holding structure, at the threshold, the burden is on the Revenue to allege and establish abuse, in the sense of tax avoidance in the creation and/or use of such structure(s). In the application of a judicial anti-avoidance rule, the Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant. To give an example, if a structure is used for circular trading or round tripping or to pay bribes then such transactions, though having a legal form, should be discarded by applying the*

test of fiscal nullity. Similarly, in a case where the Revenue finds that in a holding structure an entity which has no commercial/business substance has been interposed only to avoid tax then in such cases applying the test of fiscal nullity it would be open to the Revenue to discard such interpositioning of that entity. However, this has to be done at the threshold.

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100. *Be that as it may, did HTIL possess a legal right to appoint Directors onto the board of HEL and as such had some "property right" in HEL? If not, the question of such a right getting "extinguished" will not arise. A legal right is an enforceable right. Enforceable by a legal process. The question is what is the nature of the "control" that a parent company has over its subsidiary. It is not suggested that a parent company never has control over the subsidiary. For example, in a proper case of "lifting of corporate veil", it would be proper to say that the parent company and the subsidiary form one entity. But barring such cases, the legal position of any company incorporated abroad is that its powers, functions and responsibilities are governed by the law of its incorporation. No multinational company can operate in a foreign jurisdiction save by operating independently as a "good local citizen".*

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A. Lifting the veil — Tax laws

277. *Lifting the corporate veil doctrine is readily applied in the cases coming within the company law, law of contract, law of taxation. Once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interests of the shareholders, investors, parties to the contract and also for tax evasion, the court can always lift the corporate veil and examine the substance of the transaction.*

22. Though after the judgment in the case of ***Vodafone International Holdings B.V. (supra)*** was delivered, the Finance Act, 2012 has brought in amendments in the Act of 1961 including Section 9 of the Act and

introduced General Anti Avoidance Rule (GAAR) but to our mind, neither the provisions of GAAR nor any other provisions introduced in Section 9 of the Act of 1961 are enough to sustain the tax which has been levied in the instant case.

23. "Company is a juristic person and a separate legal entity from its members". Section 9 of the Companies Act, 2013 encompasses this legal position in the following manner:

> ***Effect of registration.***
>
> *9. From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.*

24. If the facts of the case are tested on above legal position, we find that the Tribunal has dealt with the facts, law and evidence in their correct perspective. We have gone through the findings of the Tribunal and have examined the facts ourselves. We are of the considered view that the respondents' investment in purchase of shares of CCL cannot be said to be in violation of any of the provisions of law, including the Act of 1961, for following reasons:

(i) The company (CCL) is registered in British Virgin Islands and the properties were situate in the United Kingdom, tax if any, is payable under the laws of the United Kingdom.

(ii) The shares in the company were acquired by the respondents and the amount towards share capital was sent through proper banking

channels and remitted under the permitted Liberalised Remittance Scheme (LRS) of the RBI.

(iii) As the remittance were permitted under permitted LRS of the RBI, it can safely be presumed that there was a valid approval for acquiring shares in the company.

(iv) Apart from its own source, the company took loans from HSBC bank in the United Kingdom in order to purchase flats and thereby derive rental income.

(v) There is no gainsaying the fact that the applicable tax under the laws of the United Kingdom had been paid and there is no denial to such fact.

(vi) The documents which the AO had recovered during search relate to various expenditure carried out by the company, which the respondents-assessees even as shareholders can ask and have.

25. Legally speaking, the respondents being shareholders of the company, even if holding all the shares (100%), are only owners of the shares of the company and not the owners of the property as such and similarly the income which that company has earned cannot *ipso-facto* be treated to be an income of the assessees, who are residents of India. It is a different matter that as and when dividend is received by the respondents (in India or in the United Kingdom), such dividend may be exigible to tax. Hence, it is only the dividend income *qua* the shares of the company, which can be taxed and not the income of the company itself.

26. The AO's endeavour to bring in doctrine of 'substance over form' is an attempt in anxiety of enriching the exchequer, which is not backed by the statutory framework - it is apparently unknown to the Act of 1961.

27. We hasten to add that tax under the Act of 1961, being a fiscal statute, can be levied only if a transaction falls within the sweep of statutory provisions, it cannot be taxed by introducing some deeming fiction or concept not married to the Act of 1961. It is a settled position of law that fiscal liability and provisions imposing tax are required to be interpreted strictly. As of today, there is no provision of the Act of 1961 under which the set of transactions in hand can be subjected to tax. The AO's attempt to lift or pierce the corporate veil is simply misplaced if not misconceived, as it is not even a case of tax avoidance much less tax evasion. An assessee cannot be dissuaded, rather penalised for earning an income through legally permissible methods and sources and get optimum return on his investment. If that is to be done, the same can only be done by the legislature by enacting a valid law in this regard. But until then...., the matter has to rest.

28. The present appeals are thus, dismissed and consigned to record.

DINESH MEHTA
(JUDGE)

VINOD KUMAR
(JUDGE)

APRIL 24, 2026/ck