

Explanation to Indirect Share Transfer provisions inserted by Finance Act, 2015 applicable retrospectively

Fact of the Case

- The appellant, Augustus Capital PTE Ltd. sold its entire shareholding in Accelyst to an Indian company, namely, Jasper Infotech Private Limited
- The sale consideration was Rs.41,24,35,969. The buyer, Jasper Infotech Private Limited, withheld taxes at source amounting to Rs. 17,84,19,800/.
- The assessee was of the firm belief that the transaction involving sale of shares of foreign company, which held investment in India, was not taxable as per amended provision of section 9(1)(i) of the Act.
- The Assessing Officer asked the assessee to explain as to why capital gains arising from the sale of shares from Accelyst to Jasper Infotech Private Limited should not be brought to tax in India under section 9(1)(i) of the Act
- The assessee contended that Explanation 7 to Section 9(1)(i) of the Act states that the impugned transaction is not taxable
- The Assessing Officer disregarded the submissions of the assessee as the Assessing Officer was of the firm belief that operation of Explanation 7 to section 9(1)(i) of the Act is prospective, since it has been inserted by the Finance Act, 2015 and made effective from April 1, 2016 and, therefore, not applicable in the year under consideration.

Decision of the Case

- The Coram consisting of Amit Shukla and N.K. Billaiya clarified that section 9(1)(i) of the Act was amended and Explanation 5 was inserted by the Finance Act, 2012 giving retrospective effect from April 1, 1962, because of apprehensions and ambiguities in the said Explanation Shome Committee was constituted and on the recommendations of Shome Committee, Explanations 6 and 7 were inserted by the Finance Act, 2015.
- The ITAT directed the Assessing Officer to read Explanation 7 as applicable for the year under consideration and delete the impugned addition.