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No action could be taken against foreign parent Co. by issuing notices to its Indian group Co.

Summary – The High Court of Mumbai in a recent case of Techpac Holdings Ltd., (the Assessee) held that where status of assessee was a non-resident, fact that assessee was already employed before leaving India should not effect his residential status

Facts

(*a*) Ingram Micro Asia Holdings Inc., a company incorporated in USA and part of US based Ingram Group, acquired shares of assessee-company (Techpac Holdings Ltd.), a company incorporated in Bermuda and ultimate holding co. of Techpac Group.

(*b*) After the aforesaid acquisition, the Indian entity of the Ingram Group [Ingram Micro India Pvt. Ltd.] was merged into the Indian entity of the Techpac Group [Tech Pacific India] and post-merger, the name of Tech Pacific India was changed to Ingram Micro India Ltd.

(*c*) During the search and seizure proceedings carried out at the premises of Ingram Micro India Ltd. [previously known as Tech Pacific India] (hereinafter referred to as 'Ingram Micro India'), Assessing Officer (AO) found share purchase agreement under which shares of assessee-company (i.e., Techpac Holdings Ltd.) were transferred to Ingram Micro Asia Holdings Inc.

(*d*) It was contended by AO that by virtue of the said agreement, assessee had transferred all the assets and liabilities of its Indian Group Company (i.e., Tech Pacific India) to Ingram Micro Asia Holdings Inc. Hence, there was a clear transfer of capital asset in India and, therefore, by virtue of the provisions of Section 9 of the Income-tax Act ('Act'), the income from such transfer was deemed to accrue in India.

(*e*) Accordingly, AO issued notices under section 142(1), 143(2) and 148 to Ingram Micro India. It was contended by AO that he didn't have address of the assessee. Therefore, notices were sent to the address of the Ingram Micro India.

(*f*) The notices were duly received by Ingram Micro India who opened the postal envelope and after seeing the contents thereof, closed it and sent it back to the Revenue Authorities. Accordingly, AO passed ex-parte order under Sec. 144 against assessee.

(*g*) Assessee filed the instant writ to challenge the order of AO by contending that it was not liable to pay any capital gain tax in India. Further, it was contended that notices should be served on it instead of Ingram Micro India.

The High Court held in favour of assessee as under-

(1) The Supreme Court in the case of *Y. Narayana Chetty* v. *ITO* [1959] 35 ITR 388 held that service of the requisite notice on the assessee is a condition precedent to the validity of any re-assessment. If a valid notice is not issued as required, proceedings taken by the Income Tax Officer in pursuance of the invalid notice and the consequent orders on assessment passed by him would be void and inoperative.

(2) In the instant case, notices were issued upon Ingram Micro India instead of assessee, although address of assessee, as mentioned in share purchase agreement found during search and seizure proceedings, was available with the department.

(3) Further, Ingram Micro India was neither representative of assessee nor its agent. Therefore, service of the notices on Ingram Micro India could never be considered as good service of notices on assessee.

(4) As far as issue of capital gain tax was concerned, it was held that no company can enter into any agreement for sale of its own shares. The shares of the company are held by its shareholders who are the owners of the shares and who alone can transfer the same to a third party. Therefore, capital gain could not be taxable in the hands of assessee.