Investment in shares of Indian subsidiary cannot be treated as income - reassessment notice quashed by HC

Summary – The High Court of Delhi in a recent case of Nestle SA, (the Assessee) held that Investment in shares of Indian subsidiary cannot be treated as income

Facts

- Assessee a Swiss company had its subsidiary in India. It had received approximately Rs. 419 crores from Nestle India as dividend and interest over past three years and purchased further shares of its Indian subsidiary for Rs. 280 crores approximately from open market as per SEBI regulations.
- Assessing Officer issued reopening notice on ground that owing to non-filing of return for subject assessment year by assessee, source of its investment could not be substantiated.
- Accordingly, the department stated that it had reason to believe that income which was chargeable to tax, escaped assessment by reason of the failure on part of assessee to fully introduce all material facts.
- On appeal to the High Court:

Held

- The HC stated that assessee's income in India comprised of dividend and interest income on which TDS was deducted and the assessee was not required to file any return of income under section 139(1) for subject assessment year in terms of section 115A(5).
- The objection of assessee that its investment in shares of its subsidiary cannot be treated as income is also well founded. Share purchase was a 'capital account' transaction not giving rise to income.
- Notice issued to assessee was a system generated notice since NMS detected assessee as a non-filer does not automatically mean that assessee had to be issued a notice under section 147. The said transaction in question does not give 'reasons to believe' that assessee's income had escaped assessment. Accordingly the impugned notice was to be set aside.