

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3632/DEL/2025
(Assessment Year: 2015-16)**

**ITA No.3633/DEL/2025
(Assessment Year: 2017-18)**

Argos Holdings Pte. Ltd.,
6, Raffles Quay,
24-04, Singapore – 999999.
(PAN : AAMCA8581D)

vs.

DCIT,
Circle Intl.Tax 1(1)(1),

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Tulsiyan, Advocate
Ms. Lata Goyal, CA
Ms. Bhumiya Verma, Advocate
REVENUE BY : Shri Saroj Kumar Dubey, CIT DR

Date of Hearing : 28.08.2025
Date of Order : 06.11.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. These appeals preferred by the assessee are directed against the assessment order dated 31.03.2025 passed by the DCIT, Circle Int. Tax 1(1)(1), Delhi under section 147 read with section 260 of the Income-tax Act, 1961 (for short 'the Act') for Assessment Years 2015-16 & 2017-18 pursuant to the directions of the Dispute Resolution Panel u/s 144C(5) of the Act.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.

First, we take up AY 2015-16 as the lead case.

3. At the outset of the hearing, ld. AR submitted that assessee has filed additional grounds of appeal under Rule 11 of the Income Tax (Appellate Tribunal) Rules and it is purely legal issue and the same is reproduced below :-

“1. That the Appellant being a foreign company having no Permanent Establishment (P.E.) in India for A.Y. 2015-16, the provisions of section 6(3) were consequently inapplicable, warranting that the Ld. Assessing Officer had no jurisdiction to assess income in India; consequently, there could not have been any escapement of income under section 148 of the Act.

2. That the Ld. Assessing Officer misdirected himself by alleging 'Place of Effective Management' (POEM) in India, whereas the unamended section 6(3)(ii) applied for A.Y. 2015-16, thereby rendering the action of the Ld. Assessing Officer ultra vires to the provisions of the Act.

3. That the Appellant company being a foreign company and a SEBI-registered Foreign Portfolio Investor (Category III) had no income chargeable to tax other than interest income on which tax under section 194LD had been duly withheld, thus warranting no requirement to file a return of income under section 1115(S) of the Income Tax Act, 1961.

4. That the entire action of the Ld. Assessing Officer in invoking section 148 on the alleged ground of "information flagged on Non-Filers Management System" is contrary to the express provisions of law contained in section 115A(S) of the Act.

5. That the impugned notice under section 148 issued under the unamended provision of law as on 31.03.2021, but served on 25.06.2021, is contrary to the mandate of law as laid down by the

Hon'ble Supreme Court in Union of India v. Ashish Agarwal [2022 SCC OnLine SC 543].

6. That the Revenue failed to initiate proceedings under section 148A for a notice issued under the old provisions of section 148 of the Act. The same cannot be upheld as the old provisions ceased to have force of law post 31.03.2021.”
4. Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, ld. AR of the assessee prayed that the same may be admitted in view of the judgement of NTPC Ltd. vs. CIT, (1998) 229 ITR 383 (SC).
5. On the other hand, ld. DR for the Revenue has no objection of admitting the additional ground of appeal being purely legal issue.
6. In view of the reliance made by the ld. AR for the assessee on the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. (supra) and issue being purely legal, we proceeded to admit the additional ground of appeal being a legal issue.
7. Brief facts of the case are, the Assessing Officer observed that the information was flagged on Non-filers Management System of the Income Tax Department. According to which the assessee has entered transactions during the FY 2014-15 relevant to AY 2015-16 as under:-

S.No.	Transaction Amount (Rs./-)	Category
1.	448,00,00,000	Paid Rs.5,00,000 or more for acquiring Bonds/Debenture
2.	8,24,81,096	TDS Return – Payments by way of interest on certain bonds and government securities.

8. He observed that assessee had not filed the return of income for AY 2015-16, in view of the above, the Assessing Officer formed reason to believe that income had escaped assessment, accordingly, the case was reopened by issue of notice u/s 148 of the Act on 31.03.2021 after recording satisfaction and obtaining necessary sanction u/s 151 of the Act from the competent authorities. In response, assessee has submitted that the company has already wound up on 05.06.2021 as per the applicable law in Singapore.
9. The AO observed that the assessee is a company incorporated in Singapore and a tax resident of Singapore. During the year under consideration, the assessee made investment of Rs.448 crores on account of purchase of Non-Convertible Debentures (NCD) in Sugam Vanijay Holdings Private Limited (SVHPL), an Indian company. As per the information available with the Assessing Officer, investment in SVHPL is primarily funded by way of issuance of equity shares, redeemable preference shares and shareholder loan amounting to USD 74.1 million from the sole shareholder of assessee, Ephesus Holding Pte Ltd., a Singapore incorporated company. Since there was no compliance from the assessee side to the various notices issued by the Assessing Officer, final notice was issued to the assessee on 22.08.2022. In response to the

same, assessee filed its reply dated 24.08.2022 and it was submitted as under :

“In this regard, it is humbly submitted that the Company has been wound up on June 05, 2021 as per the prevailing laws in Singapore. Hence, the company was already liquidated prior to the commencement of the said proceedings and hence, the proceedings are void ab initio.

It is humbly submitted that the above response was, however, not taken on record by your good self and notwithstanding the above, several notices were sent to the company which was responded to in good faith.

No requirement to file return of income:

2.1. Secondly, the assessee submitted that it was exempted to file return of income due to the provisions of section 115A(5) of the Income Tax Act, 1961.

The reply of the assessee is reproduced below:-

2.2. The Company was registered as a Category III Foreign Portfolio Investor ("FPI") with the Securities & Exchange Board of India ("SEBI"). A copy of the registration certificate is annexed herewith as Annexure 4.

In the subject AY, the only taxable income accruing or arising to Argos was interest on the NCDs held in Sugam Vanijya Holdings Private Limited, ("SVHPL") on which tax was deducted at the rate of 5.253% (inclusive of applicable surcharge and cess).

Further, the rate of interest on such NCOs of SVHPL was 12% per annum, which was within the limits prescribed under Section 194LD of the Act, considering that the date of allotment of such NCOs was February 4, 2015.

A copy of the Form 26AS for the said A Y evidencing that TDS at the applicable rate of 5.253% has been deducted on the entire interest income of the Company from the NCOs held in SVHPL is enclosed herewith as Annexure 5.

2.3. Hence, under Section 115A(5) of the Act, the Company was exempted from the requirement of filing a return of income for AY 2015-16.

Tax liability fully discharged :-

3.1 It is submitted that the entire tax liability arising on the total taxable income earned by the company during the subject A. Y. i.e ., the interest income on NCOs of SVHPL was entirely discharged by way of taxes withheld on the same by SVHPL.

3.5. Based the above, it is humbly submitted that the tax liability of the Company pertaining to taxable income accrued/ arising to it during the subject A Y has been discharged in full.

No business in India

Thirdly, the assessee contended that the amount of 448,00,00,000 and 8,24,81,096/- should not be treated as business income of the company because of the following:-

4.1. In the notice dated August 18, 2022, your goodself has proposed to treat the amount of INR 448,00,00,000 as undisclosed income of the Company and the interest income of INR 8,24,81,096 as undisclosed business income of the Company.

4.2. However, it may be noted that the Company was not engaged in any business or profession in India.

4.3. In this regard, your kind attention is drawn to the provisions of section 2(14)(b) of the Act which states as follows:

"any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), but does not include-"

4.4. As stated earlier, Argos was registered as an FPI with SEBI and accordingly, the NCDs held by the Company would qualify as 'capital assets'.

4.5. Given the above, the transaction relating to investment in capital assets and the income arising to the Company from such investment in the NCDs (which constitute capital assets) cannot be regarded as business income.”

10. After considering the submissions of the assessee, the Assessing Officer rejected the same and proceeded to make the addition with the following observations:-

“(i) First of all, main contention of the assessee is that the "Company has been wound up on June 05, 2021 as per the prevailing laws in Singapore. Hence, the company was already liquidated prior to the commencement of the said proceedings and hence, the proceedings are void ab initio." is hereby rejected as the letter for non-filing of ITR was issued to the assessee company on 17.03.2021, towards which there was no compliance. Thereafter, after due verification and approval notice u/s 148 of the Income Tax Act, 1961 was issued to the assessee on 31.03.2021. The assessee did not comply to the same. Finally, the assessee responded to the notice u/s148 intimating about the liquidation of the company on 05/06/2021. In this regard, it can be held that the liquidation was an afterthought, and company has been wound up, after issuance and receipt of notice dated 31.03.2021. Hence, the notice u/s 148 of the Income Tax Act, 1961 is valid.

(ii) Vide this office's various earlier questionnaire issued u/s 142(1) of the Income Tax Act, 1961 assessee company was required to amounting to Rs.448,00,00,000/- furnish the details about the source and creditworthiness of such investment. But assessee, company has failed to furnish any documents to prove the same and merely stated that the "The Company was registered as a Category III Foreign Portfolio Investor ("FPI") with the Securities & Exchange Board of India ("SEBI") and funds that was invested in India was the funds borrowed from Ephesus Holding Pte. Ltd, "a Singapore based entity.

(iii) Upon perusal of submission and details available with this office it is noted that the Ephesus Holding Pte. Ltd, is the ultimate holding company of the assessee company and the entire investment made by AHPL in SVHPL during the year under

consideration was funded by Ephesus Holding Pte. Ltd. In spite of categorical queries raised vide notice u/s 142(1) dated 14.03.2022 regarding source of investment assessee company failed to furnish any documentary evidence in respect of source of funds and creditworthiness of Ephesus Holding Pte. Ltd to AHPL during the year.

(iv) During the course of assessment proceeding it was also noticed that no shareholder's agreement were made by the assessee company even though the principal activity of AHPL was that of an investment holding company and AHPL does not have any employees or activities in Singapore. Apart from investment in NCDs in Sugam Vanijya, it has no other investment in any other Indian companies. Hence, the facts clearly show that there is no rationale for incorporation of the AHPL in Singapore. The funds are obtained from the holding company in Singapore, invested in India in NCDs, and the interest earned on these NCDs is repatriated back to Singapore.

(v) It is also important to mention here that during the course of assessment proceedings it is also noticed that the AHPL, SVHPL and Ephesus Holding Pte Ltd. are related parties as per the response to notice u/s 133(6) of the Income Tax Act, 1961, by SVHPL. Perusal of the bank statement of AHPL for the relevant F.Y. shows that throughout the year, the only transaction has been of a credit entry of 74,100,000 USD from Ephesus Pte Ltd and debit entry of same amount to SVHPL. This highlights the fact that AHPL was a shell entity with no genuine business activities of its own.

5.1 Hence, in the light of above facts and findings, it is very clear that the funds invested by assessee company in India in the guise of Foreign Portfolio Investor ("FPI") is nothing but the income accrued or arisen in India upon which no tax was paid and routed through the Singapore Route in the guise of FPI. Since, assessee company has not furnished the details of source/creditworthiness of such funds, hence; the entire investment of Rs. 448,00,00,000/- made in SVHPL(now known as VR Dakshin Private Limited) during the F.Y. 2014-15 relevant to A.Y. 2015-16 is treated as unexplained source of income which was accrued or arisen in India and hence, is added as undisclosed

business income of the assessee and taxed accordingly as per the Income Tax Act, 1961.”

11. Further he made addition of Rs.8,24,81,096/- towards interest received by the assessee from SVHPL which assessee failed to offer to tax in India stating the reason that entire tax liability was discharged by way of TDS u/s 194LD of the Act. This submission was rejected by the Assessing Officer and proceeded to make the aforesaid addition.
12. Aggrieved with the above order, assessee filed objections and detailed submissions before the ld. DRP, after considering the detailed submissions of the assessee, ld. DRP rejected the objections raised by the assessee and sustained the addition made by the Assessing Officer.
13. Aggrieved assessee is in appeal before us raising following grounds of appeal :-

“Ground No.1 : That on the facts and circumstances of the cases the Ld. Deputy Commissioner of Income Tax, Circle International Taxation 1(1)(1), Delhi (the 'Ld. AO') has erred in proceeding with the reassessment despite the appellant being legally wound up on 05.06.2021, prior to substantial reassessment proceedings. Hence the Impugned Order passed is void ab initio and liable to be quashed.

a. The ld. AO has erred in not appreciating the fact the Appellant was a foreign company which was already wound up on 05.06.2021, and the reassessment initiated vide notice dated 31.03.2021 (intimated to the Assessee by email only on June 25, 2021), hence, the assessment proceeding in bad in Jaw.

b. The Ld. AO has erred in law and facts in passing the assessment order in the name of a non-existent entity, which had ceased to exist as on the date of issuance of such order, thereby rendering the assessment order null and void ab initio and liable to be quashed.

Ground No.2: That on the facts and circumstances of the cases the Dispute Resolution Panel - 1, New Delhi ("DR P") erred in upholding the additions without proper consideration or the material on record and without applying an independent judicial mind, contrary to the mandate of section 144C(5) of the Act and the binding directions of the Hon'ble Delhi High Court.

Ground No.3: The Ld. Assessing Officer erred in law and on facts by failing to consider the detailed documentary evidence and legal submissions filed by the Appellant including proof of FPI registration, fund flow details, and Form 26AS, the assessment was completed without granting an adequate and effective opportunity of hearing. Such omission constitutes a gross violation of the principles or natural justice and renders the impugned assessment order procedurally defective, arbitrary, and unsustainable in law.

Ground No.4(a): That on the facts and circumstances of the case, the Ld. AO erroneously passed the impugned Order beyond the time limit as prescribed under the IT Act. hence the impugned order is bad in law and quashed.

Ground No.4(b): On the fact and circumstance of the case and relying on Madras High Court in the case of Roca Bathrooms Products (P) Ltd. vs. DRP-2, Bangalore (2021) 127 taxman. Com 332 (Madras), the order passed by under section 147 read with section 260 is barred by limitation, bad in law and void-ab-initio.

Ground No.5: That on the fact & circumstances of the cases the AO erred in invoking Sec. 68 to treat capital investment made through banking channels as unexplained cash credit without proving that such amount represented income of Appellant chargeable to tax in India, & in complete disregard of fact that Appellant is a non-resident with no permanent establishment in India.

a. The AO failed to appreciate that Appellant being a foreign company, invested offshore funds in Non-Convertible Debentures (NCDs) of Sugam Vanijya Holdings Pvt. Ltd. (now known as VR Dakshin Pvt. Ltd. (SVHPL) with no nexus to Indi, & was thus not required to establish source of such funds. The proposed adjustment is vague, ambiguous & against principal of natural Justice.

b. The AO disregarded that Appellant being an Foreign Portfolio Investment ("FPI") registered entity has acquired listed CDs in SVHPL through legitimate banking channel. Thus, proposed adjustment is vague, ambiguous & against principal of natural justice.

Ground No.6: That under the facts & circumstances of the case & in law. the AO erred in questioning source of funds of Appellants holding company. Ephesus Holdings Pte Ltd. (EHPL), a non-resident & legally distinct entity.

a. The Ld. AO has erred in not appreciating the fact that Appellant has discharged the initial burden u/s 68 of the Act by establishing identity of

investor, genuineness of transaction & routing of fund through legitimate banking channels.

b. The Ld. AO has erred in enquiring into source of source i.e. fund of EHPL was unwarranted & beyond scope of lawful enquiry, especially in absence of any evidence of tax evasion or Indian-sourced income. This is notwithstanding the fact that assessee has submitted full details about source of funds as was desired.

c. The Id. AO has erred in enquiring into source of funds of EHPL in relation to source of fund which were lent by it to Appellant, without realising that the first proviso to Sec. 68 (which authorizes the AO to enquire into source of funds of Appellant's lender) was inserted only w.e.f. April 1, 2023 (vide Finance Act, 2022).

Ground No.7: That on the facts and circumstances of the cases the Ld. AO erred in law in treating the investment amounting to INR 4,48,00,00,000 made in SVHPL as undisclosed income without any cogent basis, ignoring the documentary evidence provided regarding the source, nature and purpose of the investment.

a. The Ld. AO has erred in not considering the documentary evidences provided in relation to the source of the investment. Hence, the proposed adjustment is against the principal of natural justice.

b. That under the facts and circumstances of the case Ld. AO has erred in making additions on issues other than subject matter of re-opening, rendering the re-opening and the consequent re-assessment void.

Ground No.8: That on the facts and circumstances of the case, the AO erred in denying benefit of concessional rate of tax u/s 194D r.w.s. 115A of the Act.

a. The AO has erred in not appreciating that Appellant was a SEBI registered Category HIFPI, eligible for concessional tax treatment u/s 194D.

b. The AO has erred in not considering NCDs in SVHPL as a rupee-denominated bond & hence, denied benefit of concessional rate of tax.

c. The AO erroneously concluded that interest rate exceeded prescribed limits & funds were used for impermissible purposes.

d. The AO has erred in law & on facts by inappropriately holding the ECB framework to be applicable in relation to subscription of NCDs by Appellant & failed to appreciate that ECB regulations are not applicable to investments made by FPI in CDs & thus, denying benefit of concessional rate solely on this ground is misplaced & contrary to statutory scheme & regulator intent & reflects lack of application of mind.

Ground No.9: That on the facts and circumstances of the case the Ld. AO. erred in denying the exemption of the filing of return of income under section 115A(5) of the Act read with section 194LD or the Act as well as non grants of TDS deducted on income being included by him in the Total Income.

a. The Ld. AO has erred in not appreciating the fact the Appellant was a foreign company and registered in India as Category III FPI regulated by SEBI and has invested in the listed NCDs, hence eligible for the benefit of the concessional tax rate under section 194LD of the Act.

b. That on the facts and circumstances of the case, the Ld. AO has erred in disregarding the taxes already deducted on the interest income while computing the tax liability.

Ground No. 10: That on the facts and circumstances of the case, the Ld. AO has erred in not computing tax liability on the interest income as per provisions of the India-Singapore Treaty.

Ground No. 11: The Appellant craves leave to make any addition, alteration or modification etc., of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

14. At the time of hearing, ld. AR of the assessee did not press the grounds relating to Roca Bathrooms Products (P) Ltd. vs. DRP-2, Bangalore (2021) 127 taxman. Com 332 (Madras). Hence, proceeded to hear the other issues raised in these appeals.
15. At the time of hearing, ld. AR submitted list of important dates and admitted facts in the form of chart. For the sake of brevity, it is reproduced below:-

Date	Event	Paper Book	Page No	Narration
07.08.2014	Incorporation of Petitioner in Singapore	1	1 & 2-38	Argos Holdings Pte Ltd incorporated under Singapore law. It is a wholly-owned subsidiary of Ephesus Holdings Pte. Ltd., Singapore. Admitted fact in both writ petitions.
-	-	1	39-40	Tax Residency Certificate (TRC) issued by the competent authority of

				Singapore
30.10.2014	SEBI Registration as FPI	1	41	Granted Category III FPI registration under SEBI (FPI) Regulations, 2014 (Reg. No. INSGFP028814). This certificate was later placed before AO/DRP. Admitted fact.
-	Obtained PAN	-	-	Obtained PAN as per Regulation 23(f) of SEBI (FPI) Regulation, 2014, Rule 114 of Income Tax Rules and in Form 49AA
10.11.2014	Opened Bank Account	1	208	Opened Bank Account in India as per Regulation 27 of SEBI (FPI) Regulation, 2014 and Master Circular No.15/2012-13
28.01.2015	Board Resolution	1	203	Board resolution for investment in redeemable and unsecured Non Convertible Debentures (hereinafter “NCDs”) of an Indian Entity named Sugam Vanijya Holdings Pvt. Ltd. (now known as ‘VR Dakshin Private Limited’)
28.01.2015	Transfer of Funds from Singapore	1	207	Transfer of Fund of USD 7,40,00,000 from Deutsche Bank- A/C no.6561096
30.01.2015	Received funds in India	1	209	Received USD 7,40,00,000 in Indian Foreign Currency Bank [A/c No. 000406075157]
30.01.2015	Fund converted into INR	1	211	Transfer of Funds from Foreign Currency A/c to Special Non-Resident Rupee Account (SNRR A/c) [bearing account no.000405075968]
30.01.2015	Investment in NCDs	1	211	Appellant invested Rs. 448 Crores in redeemable and unsecured Non Convertible Debentures (hereinafter “NCDs”) of an Indian Entity named Sugam Vanijya Holdings Pvt. Ltd. (now known as ‘VR Dakshin Private Limited’)
31.03.2015	Interest Income of Rs.8,24,81,096/-	1	212	Interest earned on Investment in NCDs for F.Y. 2013-14 evident from 26AS.
30.04.2015	Interest credited to Bank account	1	211	Receipt of Interest from Sugam in bank account after Deduction of TDS in bank on 30.04.2015

30.04.2015	Investment in NCDS	3	107	Argos had also subscribed to rated, redeemable NCDs issued by ICC Realty Private Limited, another Indian corporate issuer (from foreign source capital provided by the parent company, Ephesus), that were redeemed during A.Y. 2017 18 for it redeemed these debentures for Rs. 17,15,57,260, resulting in a capital gain of Rs.1,55,67,260 that was already subject to tax in the state of residence, i.e. Singapore and duly allowed by DRP vide order 30.03.2025.
31.03.2016	Interest Income of Rs.53,76,00,000/-	3	166	Interest from Sugam from investment NCDs Evidenced from 26AS
31.03.2016	Interest Income of Rs.2,87,21,096	3	166 & 211	Interest from ICC Realty Pvt Ltd from investment NCDs evidenced from 26AS and received in bank on same date
02.04.2016	Credit of Interest in Bank Account	1	211	Bank statement evidencing receipt of interest Net of TDS
30.09.2016	Credit of Interest in Bank Account	3	29	Bank statement evidencing receipt of interest Net of TDS
31.03.2017	Interest Income of Rs.53,76,00,000	3	170	Interest from Sugam from investment NCDs Evidenced from 26AS
12.04.2016-08.11.2016	Remittance of money back to Singapore	3	29 & 26	Bank statement evidencing remittance back to Singapore
20.08.2020	Final Resolution to Wind Up	1	186	Shareholders passed final resolution approving winding up. This marked commencement of liquidation under Singapore law. Admitted fact.
05.03.2021	Filing with ACRA, Singapore	1	188-191	Intimation of dissolution filed with Accounting and Corporate Regulatory Authority (ACRA), Singapore. Triggered statutory 3-month waiting period under Singapore Companies Act. Admitted fact.

Proceedings under
Income Tax Act
1961

11.02.2021 and 17.03.2021	Income-tax compliance query	1	73-76	AO issued letter requiring compliance for non-filing of return for AYs 2015–16 & 2017–18. Petitioner was already in liquidation stage; Notice addressing to the appellant in Singapore issued only in Income Tax Portal and not in email.
31.03.2021	Notice u/s 148 (AY 2015–16)	1	77	AO allegedly issued notice dated 31.03.2021. However, actual service was only via email on 25.06.2021, i.e., after dissolution.
27.03.2021	Notice u/s 148 (AY 2017–18)	3	30	AO allegedly issued notice dated 27.03.2021. Again, service only via email on 25.06.2021, i.e., after dissolution.
05.06.2021	Dissolution / Winding Up	1	186-191	Argos formally dissolved under Singapore Companies Act. From this date, it ceased to exist in law. Admitted fact.
25.06.2021	Service of 148 Notice by Email	1	78	Section 148 notices (dated March 2021) were actually received via email at fundoperations@xanderfunds.com . By this date, the Petitioner had already dissolved. Further, the ID is not an Indian domain but a Singapore-based fund operations address. Thus, service was not even effected on any statutorily recognised Indian e-filing ID or PAN-linked registered email. Admitted fact.
11.10.2021	Reply by appellant to 148 via email	1	79-81	Former director informed AO that Argos was wound up on 05.06.2021; hence no reassessment legally possible. Admitted fact.
18.08.2022	Show Cause Notice issued	1 3	110-111 39-40	AO issued SCN proposing to treat investments and interest income as “income escaping assessment”
21.08.2022	Petitioner’s Response	1 3	112-120 41-46	Filed detailed submissions against SCN, relying on SEBI FPI certificate, TRCs, and Form 26AS showing tax withheld, and lack of jurisdiction to reassess the case u/s 148, in the name of a dissolved

				entity.
26.08.2022	Draft Assessment Orders	1 3	121-128 47-58	AO passed draft orders under section 147 r.w.s. 144C, proposing additions: • AY 2015–16: ₹ 456.24 cr (NCD investment + interest) • AY 2017–18: ₹ 138.45 cr (interest treated as undisclosed business income).
22/23.09.2022	Objections filed (Form 35A)	1 3	112-120 41-46	Petitioner filed objections before DRP along with application for additional evidence.
07.02.2023	Submissions before DRP	1 3	129-146 59-11	Written submissions filed.
09.02.2023	DRP Hearing	-	-	Part hearing conducted virtually; DRP indicated it would call for a remand report from AO.
10.02.2023	Brief Note filed	-	-	Petitioner submitted note summarising key facts and arguments.
27.04.2023	DRP Hearing	-	-	Virtual hearing conducted before DRP.
11.05.2023	DRP Directions	-	-	DRP issued directions under section 144C(5). Instead of deciding objections, remanded matters to AO. • AY 2015–16: Impugned order challenged on 26.06.2023. • AY 2017–18: Received by Petitioner via email only on 09.06.2023.
25.05.2023 / 19.06.2023	Letters to DRP	-	-	Petitioner requested DRP to recall its order and decide objections on merits under s. 144C.
26.06.2023	Writ Petitions Filed	2 & 4	-	Separate writs filed before Delhi High Court challenging DRP orders for AYs 2015–16 and 2017–18.
13.03.2024	H.C. Order	5	1-5	The Hon'ble Delhi High Court, by its order dated 13.03.2024 in W.P.(C) 8640/2023 and W.P.(C) 8641/2023, has expressly recorded, inter alia, that the Appellant had raised jurisdictional objections before the DRP including that the reassessment was initiated against a non-existent, wound-up company. It further noted that the DRP's impugned directions dated 11.05.2023 were bereft of reasoning, constituted abdication of statutory

				functions, and merely passed the buck to the AO. On this admitted basis, the DRP's directions were set aside and the matter remanded. These findings, emanating from the High Court's order, amount to admitted facts which conclusively establish the absence of jurisdiction and procedural invalidity in the reassessment proceedings.
30.03.2025	DRP Directions (Second Round)	5	54-68 & 232-239	Despite the High Court's express mandate, the DRP once again failed to adjudicate the fundamental jurisdictional objections. The directions merely rubber-stamp the draft assessment orders, without examining (i) the fact of dissolution of the Appellant on 05.06.2021, (ii) invalid service of Sec.148 notices only on 25.06.2021, (iii) absence of recorded satisfaction under Sec.6(3) regarding residence/POEM, and (iv) treaty protection under Sec.90(2) and Art.11 of the India-Singapore DTAA. By reiterating the earlier non-speaking approach, the DRP has failed to act as per the binding directions of the High Court.
31.03.2025	Final Reassessment Orders	5	69-92 & 240-258	Consequent to the perfunctory DRP directions, the AO passed final reassessment orders u/s 147 for both AYs 2015-16 and 2017-18. For AY 2015-16, a demand of ₹456.24 Cr was raised (comprising ₹448 Cr treated as "unexplained business income" + ₹8.24 Cr interest treated as "undisclosed"). For AY 2017-18, interest income of ₹107.52 Cr was taxed as "business income." These orders are fundamentally vitiated because (a) they are framed against a non-existent, dissolved company, (b) they proceed on notices that were invalidly served, (c) they ignore treaty protection despite TRCs and FPI approvals, and (d) they fail to comply with the mandatory Sec.148A procedure laid down in Union of India v. Ashish Agarwal

				(2022) 444 ITR 1 (SC).
April 2025	ITAT Appeals Filed	-	-	Aggrieved, the Appellant has filed the present appeals before the Hon'ble ITAT, Delhi (ITA Nos. 3632/DEL/2025 & 3633/DEL/2025). The appeals assail the reassessments as void ab initio, reiterating the admitted facts recorded by the High Court, and without prejudice, challenge the additions on merits. The appeals are founded on multiple independent jurisdictional defects as well as substantive grounds under the Act and DTAA.

16. With reference to above chart, ld. AR brought to our notice the assessment order and ld. DRP order and their findings. With reference to above, ld.AR submitted as under :-

Incorporation and Status of the Appellant:	The Appellant is a company duly incorporated in Singapore under the provisions of the Companies Act, Cap. 50 of Singapore . It is a wholly-owned subsidiary of Ephesus Holdings Pte. Ltd., Singapore , and during the relevant period was in possession of a valid Tax Residency Certificate (TRC) issued by the competent authority of Singapore. The Appellant was also duly registered as a Foreign Portfolio Investor (Category III) with the Securities and Exchange Board of India (SEBI) under Registration No. INGFP028814, dated 30.10.2014 . These foundational facts stand evidenced by the TRC, FPI registration records, and related supporting documents duly annexed to the Paper Book/Writ Petition, and are not in dispute.
Regulation 23(f) of SEBI (FPI) Rule Regulation, 2014: a foreign portfolio investor shall obtain a	Rule 114 of the Income Tax Rules, 1962 provides for provision for application of PAN by Companies incorporated outside

Permanent Account Number from the Income Tax Department	India (Foreign Company) in Form 49AA wherein the foreign companies are required to provide the copy of registration certificate (i.e. KYC details especially to be filled by FPIs) issued in India vide Item No 16 of Form 49AA for PAN application.
Regulation 27 of SEBI (FPI) Regulation, 2014: A foreign portfolio investor shall appoint a branch of a bank authorized by the Reserve Bank of India for opening of foreign currency denominated account .and special non-resident rupee account before making any investments in India.	The appellant authorised ICICI Bank as per the above and opened bank account with it. The Bank account was opened as per Master Circular on Foreign Investment in India dated July 02, 2012 as amended upto April 01, 2013 i.e. RBI/2012-13/15 [Master Circular No.15/2012-13].
Transfer of Funds from Foreign A/C in Singapore to India	Pursuant to RBI Circular, after opening of bank account with ICICI Bank, the appellant transferred USD 7,40,00,000.00 from its foreign Bank Account In Singapore on 28.01.2015 to Foreign Currency Account with ICICI Bank , [bearing no.000406075157] which was credited on 30.01.2015. Thereafter, USD 7,28,28,950.04 equivalent to Rs.448 crores was transferred from Foreign Currency Account with ICICI Bank [bearing no.000406075157] to Special Non-Resident Rupee Account (SNRR A/c [bearing account no.000405075968] on 30.01.2015.
Investment in Non-Convertible Debentures during AY 2015–16	During A.Y. 2015-2016, Argos invested Rs. 448 Crores in redeemable and unsecured Nonconvertible Debentures (hereinafter “NCDs”) of an Indian Entity named Sugam Vanijya Holdings Pvt. Ltd. (now known as ‘VR Dakshin Private Limited’) from funds received from its holding company, Ephesus. The NCDs yielded an interest of Rs.8,24,81,096 for A.Y. 2015-16 in the hands of the Appellant and of Rs. 53,76,00,000 for A.Y. 2017-18. The said debentures carried a coupon rate of 12% per annum. Interest accrued thereon was credited periodically, with Tax Deducted at Source (TDS) duly effected on each occasion of such credit. The

	subscription amount, the corresponding interest accruals, and the trail of TDS deduction are supported by the contemporaneous records annexed to the submissions. Interest earned of Rs. 8,24,81,096 (A.Y. 2015-16) and Rs. 53,76,00,000 (A.Y. 2017-18) on NCDs of VR Dakshin Private Limited were subject to TDS at concessional rates under Section 194LD of the Income Tax Act, 1961 (5.253% and 5.4075% respectively), fully deposited by the issuer, Sugam Vanijya Holdings Pvt Ltd.
Exposure to ICC Realty (India) Pvt. Ltd.	In addition to its debenture investments in VR Dakshin Private Limited, Argos had also subscribed to rated, redeemable NCDs issued by ICC Realty Private Limited, another Indian corporate issuer (from foreign source capital provided by the parent company, Ephesus), that were redeemed during A.Y. 2017-18 for it redeemed these debentures for Rs. 17,15,57,260, resulting in a capital gain of Rs.1,55,67,260 that was already subject to tax in the state of residence, i.e. Singapore.
Cessation of Indian Investments and Dissolution of the Appellant	In F.Y. 2019-2020, the Singapore-based Board of Directors of Argos sanctioned voluntary winding up. Intimation dated 5th March 2021 was thereafter placed before the Accounting and Corporate Regulatory Authority, Singapore (hereinafter "ACRA") qua the dissolution of the Appellant. As per the provisions of the Singapore Companies Act, the Appellant was wound up on 5th June 2021. The chronology of winding-up and dissolution stands evidenced in the records forming part of the Paper Book.
Reopening Proceedings under	Notices purporting to have been issued

Section 148 of the Income-tax Act, 1961	under Section 148 of the Income-tax Act are reflected on the Department's portal as dated 31.03.2021 (in respect of AY 2015-16) and 27.03.2021 (in respect of AY 2017-18). However, the Notice under section 148 was served on the Appellant via email dated 25th June 2021. And in response to the same, the Appellant intimated the Department (via its former director) that the company was no longer in existence. In the present case, the admitted record shows that the impugned notices were e-mailed on 25.06.2021 to fundoperations@xanderfunds.com, the Appellant's Singapore address, after the Appellant stood dissolved (effective 05.06.2021). Such service beyond Indian territory, absent a jurisdictional foundation under Section 6(3), cannot confer valid jurisdiction on the Department. This defect compounds the fatal illegality under Section 282, rendering the entire reassessment proceedings void ab initio. The Appellant's very first reply dated 11.10.2021 records and affirms the date of receipt as 25.06.2021. The dates of issue, service, and first reply stand evidenced from the Department's records and the Appellant's correspondence on record.
High Court Proceedings and Subsequent Reassessment post fresh DRP directions	Aggrieved by the order of the DRP in the 1st round of litigation, the Appellant approached the Hon'ble Delhi High Court by way of a Writ; where on 13th March 2024, the Hon'ble Delhi High Court quashed the DRP's initial directions for lack of reasoned analysis, stayed their operation, and remanded the matter for de novo consideration <u>of all evidence</u> on record. As is evident from a reading of the Order of the High Court, the same preserves the unchallenged/undisputed facts of Argos's Singapore incorporation, board

	resolutions, Tax Residency Certificates and FPI status – as issues that have to be considered in remand, before a valid assumption of jurisdiction is assumed by the A.O. to reopen and assess the income of a foreign entity. Pursuant to the order of remand, the DRP issued its second order on 30th March 2025, directing the A.O. merely to consider findings of the Panel and pass the consequential order. It is pertinent to note that no fresh analysis or evaluation of the undisputed documentary record was undertaken, rendering the direction mechanistic and absent of independent reasoning. Pursuant to the aforesaid remand, the DRP issued fresh directions on 30.03.2025. Consequent thereto, the impugned reassessment order was passed under Section 147 on 31.03.2025, together with corresponding demand notices under Section 156.
	It is pertinent to note that just after a day of receiving the DRP Order, the A.O. passed the impugned order on 31st March 2025, for A.Y. 2015-2016 under Sec.147 of the Act, thereby adding Rs. 448 Crore (NCD subscription) and Rs. 8,24,81,096 (interest income) as the Appellant's "undisclosed income" by denying treaty and withholding tax benefits, to thereafter raise a demand of Rs. 5,259,040,290. Similarly, vide Order dated 31st March 2025, the A.O. for A.Y. 2017-18 passed the impugned order by disallowing the amount received from Nonconvertible Debenture Redemption (of ICC Realty): amounting to Rs. 245,47,78,600/- and repatriated abroad, plus the interest received on the original debenture subscription of Rs. 53,76,00,000/- - by treating both as "undisclosed business income," to raise a demand of Rs. 5,651,347,830.

The impugned order for both A.Y. 2015-2016 and A.Y. 2017-2018 contains no engagement, or application of mind by the A.O. citing that he/she had any reason to believe that the Appellant, a foreign entity, was subject to tax in India under Sec.6(3) of the Act, despite the TRCs or FPI and other myriad evidences that establish its effective management and residence to vest outside of India. The impugned orders therefore replicate the DRP's observations lock, stock and barrel, bereft of proper and due application of mind, therefore leading to the preference of the aforementioned appeals. It is pertinent to also note that the above matrix is duly recorded in the Appellant's submissions, and stands borne out from the admitted facts placed before the Hon'ble Delhi H.C. and the impugned orders themselves.

SUBMISSIONS: (ON JURISDICTION /ROOT OF THE MATTER) :
Foreign Company Status of the Appellant, Absence of Permanent Establishment in India, and Defective Service of Notice under Section 282 of the Income-tax Act, 1961:

Residency in Singapore Remains Undisputed

The Appellant, Argos, and its holding company, Ephesus, furnished valid **Tax Residency Certificates (TRCs)** issued by the **Inland Revenue Authority of Singapore (IRAS)**, which were placed on record before the Assessing Officer, the Dispute Resolution Panel, and the Hon'ble Delhi High Court. These TRCs conclusively establish that both Argos and Ephesus are residents of Singapore for treaty purposes. At no stage has the Department controverted these TRCs, and their authenticity stands admitted.

In addition, the Appellant's bona fide foreign investor status is corroborated by its **SEBI Category III FPI Registration Certificate** (Reg. No. INSGFP028814 dated 30.10.2014), which is on record. Further, the statutory filings before **ACRA, Singapore** — including the dissolution intimation dated 05.03.2021 and the subsequent confirmation of dissolution effective 05.06.2021 — were also placed on record before the revenue authorities and the High Court.

These statutory documents are admitted facts and collectively, form unimpeachable evidence of the Appellant's residence and management in Singapore:

1. **Tax Residency Certificates (TRCs):**
 - IRAS-issued TRCs for both Argos and its holding company, Ephesus.
 - **PB Reference:** AY15–16 PB-1 p.47–52; AY17–18 PB-4 p.87–90.
2. **SEBI Category III FPI Registration Certificate:**
 - Certificate of Registration (No. INSGFP028814 dated 30.10.2014).

- **PB Reference:** AY15–16 PB-1 p.41.
- 3. **Withholding Tax Compliance:**
 - Section 194LD TDS certificates on NCD interest and Form 26AS extracts, evidencing due withholding of tax in India.
 - **PB Reference:** AY15–16 PB-1 p.151–154; AY17–18 PB-4 p.142–145.
- 4. **Board Resolutions & Corporate Records:**
 - Board resolution dated 20.08.2020 initiating voluntary winding up, establishing situs of control and management in Singapore.
 - **PB Reference:** AY15–16 PB-1 p.186–191.
- 5. **ACRA Dissolution Filings:**
 - Intimation of dissolution (05.03.2021) and final dissolution effective (05.06.2021).
 - **PB Reference:** AY15–16 PB-1 p.186–191; AY17–18 PB-4 p.72–75.
- 6. **High Court Record:**
 - The above documents (TRCs, FPI certificate, ACRA filings) were part of the paper book before the Hon'ble Delhi High Court in the writ proceedings. The High Court order (13.03.2024, Annexure A) expressly noted these submissions, and the Department did not dispute them.
 - **PB Reference:** PB-5 (Consolidated), p.1-5

These materials, when placed before the jurisdictional Hon'ble High Court, have never been challenged or impeached at any stage of proceedings. Thus, by settled judicial authority, a valid TRC issued by the competent authority of the contracting State is sufficient evidence of residence for DTAA purposes. The Hon'ble Supreme Court in *Union of India v. Azadi Bachao Andolan* [(2003) 263 ITR 706 (SC)] held that once a TRC is produced, treaty entitlement follows as a matter of law.

I. Jurisdictional Satisfaction under Section 6(3) is Mandatory Before Issuing Notice U/s 148 to a Foreign Company

The unchallenged TRCs, SEBI FPI status, withholding tax certificate, board resolutions, Singapore tax records, and other statutory filings and documentary evidence submitted and accepted by the Income Tax Department and other Revenue Authorities establish that both Argos and its Ephesus are Singapore residents, and its place of effective management is also Singapore. Section 90(2) of the Act mandates that a DTAA “shall prevail” over domestic law; POEM or Section 6 of the Act cannot override treaty concessions, unless GAAR is invoked (which is absent in our case).

Precondition of Residence Determination – Absent:

It is settled law that before issuing a notice under Section 148 to a foreign incorporated entity, the Assessing Officer (“AO”) must first establish, as a jurisdictional fact, that the company is “resident” in India within the meaning of **Section 6(3)**. For pre-POEM years, this requires demonstrating that the **control and management of the company’s affairs were wholly**

situated in India. For post-POEM years, this requires a fact-specific determination that the company's **Place of Effective Management (POEM)** was in India. In the absence of such determination, jurisdiction to reopen does not arise.

Written Satisfaction as Statutory Mandate – Absent:

Section 148, read with Section 6(3), obliges the AO to record in writing his **“reason to believe”** that income chargeable to tax has escaped assessment, and in the case of foreign companies, that such escapement arises by virtue of the entity being resident in India under Section 6(3). This is not a matter of formality but a **jurisdictional safeguard**, ensuring that the extraordinary power of reopening is exercised only when supported by tangible material. The Supreme Court in *Calcutta Discount Co. Ltd. v. ITO* [(1961) 41 ITR 191 (SC)] and *Sabh Infrastructure Ltd. v. ACIT* [(2017) 398 ITR 198 (Del)] held that such satisfaction must be clear, specific, and recorded before notice is issued.

Tangible Material or Causal Nexus – Absent:

In the present matter, no such **separate file note or written satisfaction** is evident from the record. The impugned Notices under Section 148 contain only a generic recital of the Department's reliance on an algorithmic “NMS non-filer” cannot give rise to “reason to believe” that income has escaped assessment without identifying any facts to suggest that Argos's **control and management (for AY 2015–16)** or its **POEM (for AY 2017–18)** lay in India. There is no reference to treaty override, no factual articulation of decision-making locus, and no pointer to any undisclosed credits or escapement trigger.

As per settled law, the AO must hold a **bona fide reason to believe** that it is based on a live causal nexus between tangible material in possession and the alleged escapement of income (*ITO v. Lakhmani Mewal Das* (1976) 103 ITR 437 (SC)). In the present case, such a nexus is wholly absent. The absence of any recorded satisfaction as to residence under Section 6(3) renders the issuance of notice under Section 148 jurisdictionally defective and void ab initio.

To elaborate, the sanction recorded u/s 151 of the Act cannot be done without any file-note or separate order documenting the sanctioning authority's satisfaction under Section 147 read with Section 6(3). Thus, the A.O.'s finding that Argos is a “shell entity” stems from a reproduction of the DRP's directions, demonstrating abdication of duty and rubber-stamp adjudication, without first disposing of the jurisdictional issues raised by the Appellant before the lower authorities.

II. Notices issued on 25.06.2021 - Failure to Comply with Ashish Agarwal Regime; rendering invalidity of proceedings initiated under Section 148

Date of Service will determine the applicable law qua 148 proceedings – the same has not been complied with in the present case.

The notices dated March 2021 (qua A.Y. 2015-16 & A.Y. 2017-18) are shown on the portal but were actually served on 25 June 2021. As held by the Delhi High Court in *Suman Jeet Agarwal v. ITO*, (2022) 449 ITR 517, a notice uploaded to the ITBA portal is not deemed “issued” at the time of generation but only when it is **viewed or served in fact**. The portal timestamp is therefore not determinative. According to the Supreme Court in *Union of India v. Ashish Agarwal*, (2022) 444 ITR 1 (SC) (viewed as binding and operative from 4.05.2022), any notice under Section 148 issued between 1 April and 30 June 2021 must be treated **as a Show Cause Notice under Section 148A(b)**. This triggers an obligation on the Assessing Officer to:

- Supply the reasons and material forming the basis of reopening.
- Provide the assessee with an opportunity to reply.
- Subsequently, pass a speaking order under Section 148A(d) before proceeding further.

In the present matter, no such procedure was followed. The Department **jumped directly** to issuing notice under Sec.. 148, without ever issuing a show cause under 148A(b), supplying material, or granting an opportunity to reply, nor issuing any reasoned Section 148A(d) order. This is a manifest violation of the due process enshrined in the *Ashish Agarwal* decision (See *supra*). The notices are therefore **void ab initio**, as they were issued without compliance with the mandatory procedural safeguards post 01.04.2021. The impugned reassessment proceedings, initiated on the basis of such notices, are legally unsustainable and devoid of jurisdiction.

III. Foreign Portfolio Investor Status; Withholding under Section 194LD; Exemption from Return Filing under Section 115A(5); “Non-Filer” Classification - No Ground for Reopening

The Appellant is a duly registered **Foreign Portfolio Investor (Category III)** under SEBI regulations. During the relevant years, its only Indian-sourced income comprised **interest on listed debt instruments**, on which tax was **withheld at source under Section 194LD** of the Income-tax Act, 1961. Under **Section 115A(5)**, where tax is deductible at source on the specified income of a non-resident (including a foreign company), and such tax has in fact been deducted, the non-resident is expressly **exempt from any return-filing obligation** under Section 139(1) in respect of such income. Accordingly, the Appellant’s non-filing of returns for the relevant

years was in **strict conformity with the statute** and cannot, in law, be treated as a default. This is in addition, the **recorded reasons for reopening** do not disclose any **tangible material** evidencing escapement of income under a chargeable head, nor do they record any satisfaction as to **residence under Section 6(3)** for either AY 2015–16 or AY 2017–18. This failure to record jurisdictional satisfaction is itself a **fatal defect**.

IV. Invalid Service of Notices under Section 282 of the Income Tax Act for Extra-Territorial Service, and service on a Non-Existent Company render the proceedings to be Void.

Under **Section 282(1) of the Income Tax Act, r/w Rule 127 of the Income-tax Rules, 1962**, notices are required to be validly served upon the assessee's **known address, authorised e-mail ID, or authorised agent**. It is a settled principle of law that the **Income Tax Act, 1961 does not have extra-territorial operation beyond the territory of India, save and except to the extent expressly provided in Section 5 read with Section 6**. (See: *GVK Industries Ltd. v. ITO* [(2011) 332 ITR 130 (SC)]). Even in respect of foreign companies, jurisdiction can only be assumed where residence is established under Section 6(3), or income is deemed to accrue or arise in India under Section 9.

Service of a notice under Section 148 upon an assessee outside India, without a lawful foundation of residence/PE/POEM within India, is ultra vires the Act. In the present case, the admitted record shows that the impugned notices were e-mailed on **25.06.2021 to fundoperations@xanderfunds.com**, the Appellant's Singapore address, after the Appellant stood dissolved (effective 05.06.2021). Such service beyond Indian territory, absent a jurisdictional foundation under Section 6(3), cannot confer valid jurisdiction on the Department. This defect compounds the fatal illegality under Section 282, rendering the entire reassessment proceedings void ab initio.

Coming to the non-existent aspect of the present case, though notices under Section 148 purport to bear dates of **31.03.2021 (A.Y. 2015–16)** and **27.03.2021 (A.Y. 2017–18)**, the Department itself admits that the actual service was effected **only by e-mail on 25.06.2021**. By this date, the Appellant had already been **dissolved w.e.f. 5.06.2021**, and had ceased operations in India since 2017, with its income-tax portal lying dormant. Service upon a **non-existent, dissolved foreign company** in this manner does not satisfy statutory requirements and renders the proceedings **vitiating ab initio**.

It is a trite law that once a company is dissolved, it ceases to exist in the eyes of the law. Any assessment or demand order passed thereafter in the name of such a non-existent entity is a nullity. This principle stands settled by it is a trite law that once a company is dissolved or amalgamated, it

ceases to exist in the eyes of the law. Any assessment or demand order passed thereafter in the name of such a non-existent entity is a nullity. The Hon'ble Supreme Court in *Pr. CIT v. Maruti Suzuki India Ltd.* [(2019) 416 ITR 613 (SC)] categorically held that framing of an assessment in the name of a non-existent amalgamating company is void ab initio and not a mere procedural irregularity.

The Delhi High Court in *Spice Entertainment Ltd. v. CIT* [(2012) 247 CTR 500 (Del); (2012) 280 ITR 43 (Del)], *SLP dismissed* [(2017) 398 ITR (St.) 4 (SC)], reiterated the same principle, holding that participation by the assessee or its successor cannot cure the inherent lack of jurisdiction, and that an assessment framed on a dissolved entity is fundamentally void. The Delhi High Court has consistently applied this principle in subsequent cases, including *CIT v. Dimension Apparels (P) Ltd.* [(2015) 370 ITR 288 (Del)] and *Sky Light Hospitality LLP v. ACIT* [(2018) 405 ITR 296 (Del)], underscoring that Section 292B cannot be invoked to legitimise assessments against non-existent entities.

Applying the ratio of these binding precedents, the impugned reassessments and demand notices, having been issued in the name of the Appellant after its dissolution on **05.06.2021**, are wholly without jurisdiction and liable to be struck down.

Thus, the impugned orders suffer from myriad jurisdictional defects that go to the root of the matter, rendering them void ab initio. Hence, the impugned re-openings are ultra vires the statute, bereft of jurisdiction, and liable to be quashed ab initio."

17. On the other hand, ld. DR of the Revenue brought to our notice the findings of AO/ CIT(A) and submitted that the assessee has not submitted any convincing documents before the lower authorities. Therefore, he relied on the findings of lower authorities.
18. Considered the rival submissions and material placed on record. We proceeded to hear the additional grounds of appeal, we are confined to adjudicating the issues raised in the additional grounds of appeal. We observed from the record that the assessee is a company incorporated in Singapore and it was a tax resident of Singapore. The assessee also filed

with the TRC before the tax authorities. The assessee had invested in Non-convertible Debentures in SVHPL, an Indian Company. The source of the above funds were from its Holding Company (Ephesus Holding Pte Ltd). It is fact on record that both the companies are tax residents of Singapore. As per the facts on record, we observed that the assessee had invested in India by obtaining the relevant clearance from the SEBI, also by registering themselves as Category III,FPI. The relevant registration certificate was also submitted before the lower authorities. The assessee had received Interest on the NCDs from the Indian Company, the SVHPL had deducted the relevant TDS on the above interest income at the time of remittances.

19. The issues raised before us are, the AO had observed from the information available with him from the Non-filers Management System that the assessee had not filed the return of income for years under consideration. He observed that the assessee had only invested in NCDs and earned interest in the above investments. The AO himself observed that the assessee and its holding company thru which it had received the funds to make investments in the NCDs and the assessee had earned the interest income, he is also aware of the fact that the Indian company had deducted the TDS on such remittances. Just because the assessee had not filed the relevant return of income for the year under consideration, he

formed an opinion that the income had escaped assessment, recorded the reasons to reopen the assessment. We noticed that the AO had not recorded the satisfaction based on the information available on record without there being any proper verification. He was also aware of the fact that the assessee is a nonresident and also earned only the interest income during the year. In our view, he should have verified the fact, on what basis the interest was remitted after tax deduction at source. He should have also recorded the proper reasons on what basis, he concluded that the income escaped, particularly the assessee under consideration is a nonresident. One cannot ignore the fact that the tax authorities aware of the fact that in the case of foreign residents, the treaty provisions are applicable.

20. Apart from the above, the AO cannot overlook the statutory provisions. As per the provisions of section 115A(5) read with section 115A(1)(iiab), for the sake of brevity, it is reproduced below:

Section 115A(1)(iiab)

“115A. (1) Where the total income of—

- (a) a non-resident (not being a company) or of a foreign company, includes any income by way of—

.....

- (iiab) interest of the nature and extent referred to in [section 194LD](#); or”

Section 115A(5) (pre amended)

- (5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of [section 139](#) a return of his or its income if—
- (a) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (a) of sub-section (1); and
 - (b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.”

From the above, it is clear that the interest income which was suffered the tax deduction at source u/s 194LD, there is no requirement for the assessee to file separate return of income u/s 139(1) of the Act. Unless the assessee proved to be having Permanent Establishment in India or provisions of section 6(3) of the Act i.e., POEM is applicable. None of the above facts were brought on record by the AO while recording the reasons or recording satisfaction to initiate the proceedings u/s 147 of the Act.

21. As per the provisions, the AO gets the jurisdiction to initiate the proceedings u/s section 147 of the Act only upon recording the proper reason for initiating the proceedings. In this case, the AO had issued the notice based on list of non-filers and formed an opinion that the income escapement. Particularly, in our view, when he is aware that the assessee is a foreign entity, he should have initiated the investigation before forming an opinion. It is fact on record that the TRCs, SEBI-FPI status,

withholding tax certificate, board resolutions, Singapore tax records, and other statutory filings and documentary evidence submitted and accepted by the Income Tax Department and other Revenue Authorities, it establish that both Argos and its parent company are Singapore residents, and its place of effective management is also in Singapore. Section 90(2) of the Act mandates that a DTAA “shall prevail” over domestic law unless POEM or Section 6 of the Act override treaty concessions. In the given case, no such findings were recorded by the AO before initiating the reassessment proceedings, which is relevant to get the jurisdiction to initiate the reassessment proceedings. Further, we observed that the Hon’ble Supreme Court and Hon’ble Delhi High Court in the case of Calcutta Discount Co. Ltd (supra) and in the case of Sabh Infrastructure Ltd (supra) have placed jurisdictional safeguards to ensure the extraordinary power of reopening is exercised when the AO has tangible materials in his possession and recorded proper satisfaction which is clear, specific before initiation of proceedings and even before the issue of notice. Further, as held in the case of Lakhmani Mewal Das (supra), the AO must hold a Bonafide reason to believe that it is based on a live causal nexus between the tangible material in possession and alleged escapement of income. In the present case, the AO is aware of the fact that the assessee is nonresident company and the funds were transferred

thru the legal channel and also came to know about the source of source was from the non-resident parent company, without there being proper reasons and material, he has no jurisdiction to initiate the proceedings.

22. After considering the material facts and factual matrix on record, the initiation of proceedings without the proper reasons on record and also the statutory provisions give exemption to the assessee in case the income of the assessee is covered by the provisions of section 194LD and taxes were already deducted, the provisions of section 139 is not applicable. Therefore, the initiation of proceedings u/s 147 is void ab initio. Hence, we are inclined to allow additional grounds raised by the assessee. At this stage, we have not adjudicated the issue of applicability of Ashish Agarwal case (supra) to the present case and the other main grounds of appeal, which are kept open at this stage.

23. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 6th day of November, 2025.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 06.11.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI