

In Re: Acer Computer

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SooperKanoon Citation : sooperkanoon.com/53547

Court : Authority for Advance Rulings

Decided On : May-24-2004

Reported in : (2004)189CTRAAR498

Judge : S S Quadri, K Singh, K Gupta

Appellant : In Re: Acer Computer

Judgement :

Appellants: In Re: Acer Computer International Ltd. Vs.

Syed Shah Mohammed Quadri, J. (Chairman), K.D. Singh and K.D. Gupta, Members Advance rulings--MAINTAINABILITY OF APPLICATIONApplicability of bar of section 79--Question of academic interest Question is raised as to whether applicant's Indian subsidiary can have the 'benefit of carrying forward and set off the loss even after the change in nominal ownership, considering the fact that there would be no change in beneficial ownership of the shares. The authority will not pronounce a ruling on a question, which is of academic interest therefore, applicant's application is rejected.

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As per return of income filed by the applicant's Indian Company for the assessment year 2003-04, the entire brought forward business losses have been set off against the current year income and there is no further loss to be carried forward. It has rightly been commented by the jurisdictional Commissioner that even if a change of shareholding takes place now the provisions of section 79 may not be applicable. In view of the contents of letter of the jurisdictional Commissioner, giving a ruling on the proposed question would be academic. The authority will not pronounce a ruling on a question, which is of academic interest therefore, decline to pronounce the ruling on the proposed question. The application is accordingly rejected.

Advance rulings--MAINTAINABILITY OF APPLICATIONApplicability of bar of section 79--Question of academic interest Question is raised as to whether applicant's Indian subsidiary can have the 'benefit of carrying forward and set off the loss even after the change in nominal ownership, considering the fact that there would be no change in beneficial ownership of the shares. The authority will not pronounce a ruling on a question, which is of academic interest therefore, applicant's application is rejected.

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academic. The authority will not pronounce a ruling on a question, which is of academic interest therefore, decline to pronounce the ruling on the proposed question. The application is accordingly rejected.

1. The applicant is a non-resident company having its registered office Acer Computer International (ACI) , Business Park, # 01-01 Acer Building, Tower-A, Singapore-609923. It owns a subsidiary company M/s Acer India Ltd. (Acer India) having its registered office at Bangalore and factory in the Union territory of Pondicherry. The applicant itself is a wholly-owned subsidiary of Acer Inc. which is a foreign company listed in Taiwan Stock Exchange. Acer Inc. has another fully owned subsidiary called M/s Acer Holdings International (AHI), a foreign company having its registered office in British Virgin Islands. The applicant says that it is being proposed to transfer the shares held by ACI in Acer India to AHI and even after the proposed transfer the Acer Inc. would continue to be the beneficial owner of the shares in Acer India and it would be a change from one wholly-owned subsidiary to another wholly owned subsidiary. Presently, Acer India Ltd. has carried forward losses of Rs. 54,90,793. On these facts, the applicant seeks advance ruling from this Authority on the following question : "Whether Acer India (P) Ltd. can have the benefit of carrying forward and set off the loss even after the change in nominal ownership, considering the fact that there would be no change in beneficial ownership of the shares." 2. In the comments of the jurisdictional CIT, it is stated that the legal ownership of the shares in Acer India vests with the ACI and not Acer Inc., therefore, it can never be a beneficial owner of Acer India.

If there is a change of the shareholdings from ACI to AHI, Acer India would lose the benefit of carry forward of losses in view of the provisions of Section 79 of the IT Act. It added that the present case does' not fall in any of the exceptions wherein lifting of corporate veil is permissible, therefore, it cannot be said that since ACI is 100 per cent subsidiary of Acer Inc. all assets of ACI would beneficially belong to Acer Inc. If such a plea is allowed the whole concept of corporate entity of having independent legal status with its seal would go haywire.

4. It is necessary to take note of the development brought to our notice by the jurisdictional CIT in his letter No. Appln. Under Section 245Q/CIT(IT)/04-05, dt. the 12th April, 2004, which reads thus : 5th floor, NDMC Building, Yashwant Place, Satya Marg, Chankyapuri, New Delhi.

Sub : Application for Advance Ruling filed under Section 245Q(1) of the IT Act, 1961 in the case of M/s Acer Computer International Ltd. (ii) This office letter No. Appln. under Section 245Q/CIT(IT)/04-05 dt. 2nd April, 2004 In continuation of the above, it is respectfully submitted that the issue raised by the applicant appears to have become academic question in as much as per the return of income filed by M/s Acer India Ltd. on 27th Nov., 2002, for the asst. yr. 2003-04, the entire brought forward business losses have been set off against the current year income and there is no further loss to be carried forward. Hence, even if a change of shareholding takes place now the provision of Section 79 may not be applicable. A copy of the statement of the total income of M/s Acer India (P) Ltd., for the asst. yr. 2003-04 is enclosed for kind reference.

Perusal of the letter quoted above makes it evident that as per return of income filed by the Acer India for the asst. yr. 2003-04, the entire brought forward business losses have been set off against the current year income and there is no further loss to be carried forward. It has rightly been commented by the jurisdictional CIT that even if a change of shareholding takes place now the provisions of Section 79 may not be applicable. .

5. We have carefully considered the position. It appears to us that in view of the contents of this letter, giving a ruling on the aforementioned question would be academic. The authority will not pronounce a ruling on a question, which is of academic interest. We, therefore, decline to pronounce the ruling on the aforementioned question. The application is accordingly rejected.