

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member
and Shri. N.K Pradhan, Accountant Member**

**ITA No. 1320/Mum/2019
(Assessment Year: 2015-16)**

Deputy Commissioner Of Income-tax (IT)-
2(2)(2), Room No. 1606, 16th Floor, Air India
Building, Nriman Point, Mumbai – 400 021

Vs.

HSBC Bank (Mauritius) Ltd., C/o. BSR & Co.
LLP., 1st Floor, Lodha Excelus, Apollo Mills
Compound, N.M Joshi Marg, Mahalakshmi,
Mumbai – 400 001.,

PAN – AABCH9075N

(Appellant)

(Respondent)

Appellant by: Shri Avneesh Tiwari, D.R

Respondent by: Shri Niraj Sheth, A.R

Date of Hearing: 25.06.2020

Date of Pronouncement: 08.07.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-56, Mumbai, dated 10.12.2018, which in turns arises from the order passed by the A.O under Sec. 144C(3) r.w.s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 05.02.2018. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. " Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the Assessing Officer to follow the decision of Hon'ble ITAT on Interest income from foreign currency loan and Securities, ignoring the fact that, the assessee has not even furnished the financials e.g. Annual reports.etc. during the course of assessment proceedings and has failed to prove the beneficial ownership of funds which is one of the prerequisite to claim exemption under Article 11(3)(c) of India-Mauritius DTAA".

2."Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the Assessing Officer to follow the decision of Hon'ble ITAT on Interest income from foreign currency loan and Securities, ignoring the fact that, in India, the assessee is involved in only FII activity and no banking license has been granted by the RBI to the assessee for banking activities in India thus, assessee is not involved in any bona fide banking activities which is one of the prerequisite to claim exemption under Article 11(3)(c) of India-Mauritius DTAA"

3. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the Assessing Officer to follow the decision of Hon'ble ITAT on Interest income from foreign currency loan and Securities, ignoring the fact that, the assessee has not furnished any document demonstrating immediate source of funds and also the immediate application of the income to demonstrate that the interest income is beneficially owned by it and it is not a conduit company for the benefit of third person, which is one of the prerequisite to claim exemption under Article 11(3)(c) of India-Mauritius DTAA?"

4. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the Assessing Officer to follow the decision of Hon'ble ITAT for AY 2009-10, AY 2010-11 and AY 2011-12 ignoring the fact that the Hon'ble ITAT relied on the CBDT Circular No.789 dated 13.04.2000 without appreciating the fact that the said circular is applicable to the incomes earned by way of dividend and capital gains on sale of shares and on the other hand in the assessee's case the income involved is the interest income?"

5."Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the Assessing Officer to follow the decision of Hon'ble ITAT for AY 2009-10, AY 2010-11 and AY 2011-12 ignoring the fact that the Hon'ble ITAT relied on the judgement of Bombay High Court in the case of DIT(IT) Vs Universal International Music B.V. [2013] 31 taxmann.com 223 (Bombay) to adjudicate that, the assessee is beneficial owner of interest income, without appreciating the fact that in the relied upon case the concerned foreign Tax Authority issued a specific certificate certifying that the respondent assessee was a beneficial owner of the royalty received in respect of musical track given to M/s. Universal Music Pvt. Ltd., 3 ITA NO.1319/MUM/2019(A.Y.2014-15)

whereas, in the instant case the assessee solely relied upon the Tax Residency Certificate to prove its beneficially ownership?

6. The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer restored”. or all the above grounds of appeal, or add any further grounds, before or at the time of hearing.”

2. Briefly stated, the assessee which is a limited liability company incorporated, registered and a tax resident in Mauritius is a Foreign Institutional Investor (for short “FII”) duly registered as such by the Securities and Exchange Board of India (for short “SEBI”). The assessee had e-filed its return of income for A.Y 2015-16 on 30.11.2015, declaring its total income at Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. In the course of the assessment proceedings the assessee placed on record the Tax Residency Certificate (for short “TRC”) issued by the Mauritius Revenue Authority evidencing the assessee’s tax residence in Mauritius. On a perusal of the computation of income, it was observed by the A.O that the assessee had during the year received the following interest income :

S.No.	Particulars	Amount (Rs.)
1.	Interest income on securities (including interest on T Bills and rupee denominated bonds of Indian companies)	Rs. 12,25,28,81,554/-
2.	Interest income on External Commercial Borrowings (ECB).	Rs. 2,73,06,45,033/-
	Total	Rs. 14,98,35,26,590/-

As the assessee had not offered the aforesaid interest income for tax in India, therefore, the A.O called upon it to put forth an explanation as to on what basis the said amount was claimed to be not exigible to tax in India. In reply, it was submitted by the assessee that it was a limited liability company which was a tax resident of Mauritius, carrying on bona fide banking business as a licensed bank in Mauritius. A copy of the banking license issued by the Bank of Mauritius i.e the Central Bank of Republic of Mauritius (equivalent to Reserve Bank of India) was placed on record by the assessee. Also, a letter dated 23.07.2015 issued by the Central Bank of Mauritius certifying that the assessee was a bank carrying on bona fide banking business in Mauritius was also filed

with the A.O. Further, it was submitted by the assessee company that it was also registered as a FII duly licensed as such by SEBI, as required by the SEBI (Foreign Institutional Investors) Regulations, 1995. In the backdrop of the aforesaid facts, it was submitted by the assessee that its aforesaid interest income viz. (i). interest income on foreign currency loans : Rs. 273,06,45,033/-; and (ii). interest income on debt securities : Rs. 1225,28,81,554/-, was exempt under Article 11(3)(c) of the India- Mauritius tax treaty, which read as under:

“11(3). Interest arising in a Contracting State shall be exempt from tax in that State provided it is **derived** and **beneficially owned** by :

(a).the Government or a local authority of other Contracting State;

(b).any agency or entity created or organised by the Government of the other Contracting State;

(c).any bank carrying on a bona fide banking business which is a resident of the other Contracting State.”

[Emphasis supplied by us]

It was the claim of the assessee that as per Article 11(3)(c) of the India-Mauritius tax treaty, the conditions required to be fulfilled in order to claim interest income as exempt from tax in India viz. (i). the interest should be **derived** and **beneficially owned** by the assessee; and (ii). the entity should be a bank carrying on **bona fide** banking business in Mauritius, were cumulatively satisfied on its part. It was the claim of the assessee that as it was a licensed bank carrying on bona fide banking business in Mauritius, it had thus derived the interest income as contemplated in Article 11(3)(c) of the India-Mauritius tax treaty. In so far the requirement that the interest income arising in the Contracting State i.e India should be beneficially owned by the assessee was concerned, the assessee relied on CBDT Circular No. 789, dated 13.04.2000, which therein provided that wherever a Certificate of Residence is issued by the Mauritian Authorities, such certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the tax treaty. It was further submitted by the assessee that the validity of the aforesaid Circular was upheld by the Hon'ble Supreme Court in the case of Azadi Bachao Andolan Vs. DCIT (2003) 263 ITR 706 (SC). Apart from that, the assessee also took support of the fact that the Ministry of Finance vide its press clarification dated 01.03.2013 had unconditionally reiterated the Circular No. 789, dated 13.04.2000, and had stated that a certificate of residence issued by the Mauritian

Authority would constitute sufficient evidence for accepting the State of residence as well as beneficial ownership of the interest income. Further, support was also drawn by the assessee on the judgment of the Hon'ble High Court of Bombay in the case of DIT Vs. Universal International Music B.V (2013) 31 taxmann.com 223 (Bom), wherein relying on the CBDT Circular No. 789, dated 13.04.2000, the benefits of the India-Netherlands tax treaty were extended to an assessee incorporated in Netherlands on the basis of a tax residency certificate issued by the Dutch authorities. Further, the assessee in order to dispel any doubts as regards the source of the foreign currency loans which were granted to the Indian Corporates, submitted, that the same were primarily financed from the owned funds i.e capital, reserves & surplus and deposits which were received by it from its clients (i.e the depositors). Accordingly, it was the claim of the assessee before the A.O that the money lent/advanced was out of the funds which were available with it in the normal course of its regulated banking business.

4. However, the A.O after deliberating on the claim of the assessee was not persuaded to accept the same. Rebutting the assessee's claim of beneficial ownership of interest income, it was inter alia observed by the A.O that where an item of income is paid to a resident of a Contracting State acting in the capacity of agent or nominee, it would be inconsistent with the object and purpose of the convention for the State of source to grant relief or exemption merely on account of the status of the direct recipient of the income as a resident of the other Contracting State. It was further observed by the A.O, that it would be equally inconsistent with the object and purpose of the convention for the State of source to grant relief or exemption where a resident of a Contracting State, otherwise than through an agency or nominee relationship, simply acts as a conduit for another person who in fact receives the benefit of the income concerned. As such, it was observed by the A.O that an agent, nominee, conduit company acting as a fiduciary or administrator of the recipient of the interest income would not be the "beneficial owner" of such income, as it nether has the full right to use and enjoy the interest that it receives nor owns the said interest income. In so far the CBDT Circular No. 789, dated 13.04.2000, was concerned, the A.O held a conviction that the reliance placed by the assessee on the same was misplaced, for the reason, that the same was regarding taxation of income from dividends and capital gains under the India-Mauritius tax treaty.

Also, the support drawn by the assessee on the judgment of the Hon'ble High Court of Bombay in the case of Universal International Music B.V (supra), was held to be distinguishable on facts by the A.O. After referring to the fact pattern of the loans advanced, borrowings and interest revenue of the assessee in and outside Mauritius, the A.O observed that the banking activities carried out by the assessee in Mauritius locally were miniscule and were only for the name sake purpose. Further, the A.O in the backdrop of his observations recorded in the assessment order, therein observed that in the totality of the facts it could safely be concluded that the assessee bank was established for "Treaty shopping" purpose. Lastly, it was observed by the A.O that as the assessee was registered as a FII in India, therefore, the interest income earned by such assessee from India being FII would not be eligible for exemption under Article 11(3)(c) of the India-Mauritius tax treaty. On the basis of his aforesaid observations the A.O passed a draft assessment order u/s 144C(1) r.w.s 143(3), dated 29.12.2017. As the assessee vide its letter dated 31.01.2018 requested that the final assessment order be passed, the A.O framed the assessment vide his order passed u/s 144C(3) r.w.s 143(3), dated 05.02.2018, wherein he assessed the interest income of the assessee aggregating to Rs. 14,98,35,26,590/- to tax @5% u/ss. 115AD r.w.s 194LD and Sec. 115A(1)(a)(ii) of the Act.

5. Aggrieved, the assessee assailed the final assessment order in appeal before the CIT(A). As regards the assessing of Interest income on External Commercial Borrowings (ECB) of Rs. 273,06,45,033/- to tax u/s 115A(1)(a)(ii) of the Act @ 5%, it was observed by the CIT(A) that a similar issue had come up in the revenues appeal in the assessee's own case for A.Ys 2009-10 & 2010-11 in ITA No. 1086 & 1087/Mum/2018, wherein the Tribunal vide its order dated 30.08.2018, had concluded, that the said income was not taxable in India. In so far the charging of tax on the Interest income on securities (including interest on T Bills and rupee denominated bonds of Indian companies) of Rs. 1225,28,81,554/- u/s 115AD r.w.s 194LD @5% was concerned, it was noticed by the CIT(A) that the Tribunal while disposing off the appeal in the assessee's own case for A.Y 2011-12 in ITA NO. 1708/Mum/2016, had vide its order dated 02.07.2018 concluded that the said income was not taxable in India. Accordingly, on the basis of his aforesaid observations the CIT(A) vacated the addition of the interest income made by the A.O and allowed the appeal.

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorised Representative (for short “A.R”) for the assessee at the very outset of the hearing of the appeal submitted, that the issues involved in the captioned appeal were squarely covered by the order passed by the Tribunal while disposing off the revenues appeal in the assessee’s own case for A.Y 2014-15 in ITA No. 1319/Mum/2019. In order to drive home his said claim the Id. A.R took us through the aforesaid order of the Tribunal. Apart from that, it was submitted by the Id. A.R that adopting a similar view the Tribunal had consistently vacated identically placed additions of interest income that were made by the revenue in the assessee’s own case for the preceding years.

7. Per contra, the Id. Departmental Representative (for short “D.R”) relied on the assessment order. It was submitted by the Id. D.R that it was incorrect on the part of the counsel for the assessee to claim that the present appeal was squarely covered by order passed the Tribunal in its own case for A.Y 2014-15 in ITA No. 1319/Mum/2019. Elaborating on his said contention, it was averred by the Id. D.R that the Tribunal while disposing off the said appeal had not dealt with the claim of the revenue that as the assessee had failed to substantiate that it was the beneficial owner of the interest income and not a conduit company, therefore, Article 11(3)(c) of the India-Mauritius tax treaty could not have been applied. The Id. D.R submitted that in the backdrop of the aforesaid factual position the Ground of appeal No. 3 in the present appeal cannot be said to be covered by the aforesaid order of the Tribunal. On a query by the bench that in case the said specific ground of appeal was not dealt with by the Tribunal while disposing off the revenue’s appeal for A.Y 2014-15 in ITA No. 1319/Mum/2019, then was the said facts raised by the revenue before the Tribunal by way of a miscellaneous application, the Id. D.R expressed his unawareness about the said aspect.

8. Rebutting the aforesaid contentions of the counsel for the revenue, it was submitted by the Id. A.R that the issue as to whether the assessee was the beneficial owner of the interest income or a conduit company as alleged by the revenue was considered by the Tribunal while disposing off the aforesaid appeal i.e ITA No. 1319/Mum/2019 for A.Y 2014-15. Apart from that, it was reiterated by the Id. A.R that the issue as regards the applicability of Article 11(3)(c) of the India-Mauritius tax treaty had been looked into by the Tribunal in the assessee’s own case for the preceding years viz.

A.Y 2009-10, A.Y 2010-11, A.Y 2012-13, 2013-14 and A.Y 2014-15. The Id. A.R placed on our record the copy of the consolidated order of the Tribunal in ITA No.1086 & 1087/Mum/2018, dated 30.03.2018 for assessment years 2009-10 & 2010-11, copy of order in ITA No.5411/Mum/2018 for assessment year 2012-13 decided on 20/08/2019 and copy of the order in ITA No.2213/Mum/2018 for assessment year 2013-14 decided on 02/01/2019, wherein involving identical facts, the issue was adjudicated upon by the Tribunal.

9. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the issued involved in the present appeal lies in a narrow compass i.e as to whether the beneficial provisions envisaged in Article 11(3)(c) of the India-Mauritius tax treaty would be applicable to the interest income received by the assessee during the year, therein rendering the said receipts as not exigible to tax in India. We find that the said issue had been deliberated upon by the Tribunal in the assessee's own case for the preceding years, wherein in the backdrop of identical fact pattern involved in the said years, it has consistently been held that as per Article 11(3)(c) of the India-Mauritius tax treaty the interest income would not be exigible to tax in India. On a perusal of the order passed by the Tribunal while disposing off the appeal of the revenue in the assessee's own case for A.Y 2014-15, in ITA No. 1319/Mum/2019, dated 20.03.2020 for A.Y 2014-15, we find that it was observed as under :

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have considered the decisions of the Tribunal in assessee's own case in the preceding assessment years. We observe that in the case of present assessee taxability of interest income of foreign currency loans and securities is a perennial issue. This issue had come up for consideration before the Tribunal for the first time in assessee's case in assessment year 2011-12. The Tribunal after considering the facts of the case, CBDT Circular No.789 dated 13/04/2000 , Indo-Mauritius Tax Treaty and decision rendered by Hon'ble Bombay High Court in the case of Director of Income Tax vs. Universal International Music BV, 31 taxmann.com 223 held as under:-

“3. The appellant before us is a limited liability company which is incorporated, registered and tax resident of Mauritius. During the previous year relevant to the assessment year under consideration, assessee had, inter-alia, earned interest income of Rs.94,57,45,856/- from investments in debt securities made in accordance with the SEBI Regulations. In its return of income, the aforesaid

interest income was claimed not taxable in India on the strength of Article 11(3)(c) of the India-Mauritius Double Tax Avoidance Convention (hereinafter referred to as 'India-Mauritius Tax Treaty'). The said exemption was denied by the Assessing Officer in the assessment order passed u/s 143(3) r.w.s. 144C(13) of the Act dated 28.01.2016, which was in conformity with the directions of the Dispute Resolution Panel (DRP). Pertinently, the exemption was denied on the ground that the requisite conditions prescribed in Article 11(3)(c) of the India-Mauritius Tax Treaty were not fulfilled by the appellant assessee inasmuch as – (i) the interest was not "derived" by the assessee; (ii) that interest was not "beneficially owned" by the assessee; and, (iii) that the assessee ought to be carrying on bona fide banking business, which it did not. All the aforesaid issues were taken up by the assessee in appeal before the Tribunal, which vide order dated 16.12.2016 (supra) accepted the pleas of the assessee so far as the first two afore stated conditions were concerned. In other words, the Tribunal held that the interest income in question was derived by the assessee and that it was carrying on bona fide banking business. So however, with regard to the third condition of 'beneficial ownership', the Tribunal remanded the issue to the file of the Assessing Officer with certain directions. This aspect was agitated by the assessee by way of a Miscellaneous Application u/s 254(2) of the Act and vide its order dated 10.01.2018 (supra), the Tribunal recalled its decision so far as it pertained to the issue of 'beneficial ownership'. In this background, the learned representative for the assessee pointed out that the captioned proceeding is to adjudicate the issue of 'beneficial ownership' while evaluating assessee's claim of non-taxability of the aforesaid interest income in terms of Article 11(3)(c) of the India-Mauritius Tax Treaty. Insofar as the scope of the present proceeding is concerned, the Id. DR appearing for the Revenue did not dispute the assertions of the assessee and, in fact, our attention was also invited to two Affidavits filed by the Assessing Officer dated 21.03.2018 and 15.03.2018 before the Hon'ble Bombay High Court wherein the Revenue took the stand that the order passed by the Tribunal dated 16.12.2016 (supra) was recalled u/s 254(2) of the Act vide order dated 10.01.2018 (supra) only to the extent of the issue of 'beneficial ownership'.

4. In this background, we have heard both the parties on the issue of 'beneficial ownership' under Article 11(3)(c) of the India-Mauritius Tax Treaty qua the interest income of Rs.94,57,45,856/- earned by the assessee. On this aspect, we find that the DRP required the assessee to explain as to how it fulfils one of the requirements of Article 11(3)(c) of the India Mauritius Tax Treaty which prescribes that such interest must be 'beneficially owned' by the assessee. As per the DRP, the aforesaid was one of the pre-requisites before Article 11(3)(c) of the India-Mauritius Tax Treaty could be applied to say that the interest income in question was not taxable in India. The DRP has reproduced the submissions put forth by the assessee wherein assessee asserted that the interest income of Rs. 94,57,45,856/- earned from investment in debt securities was beneficially owned

by it. Assessee specifically drew attention of the DRP to CBDT Circular no. 789 dated 13.04.2000 which, inter-alia, prescribed that wherever a Certificate of Residence is issued by Mauritian authorities, such Certificate will constitute sufficient evidence for not only accepting the status of residence, but also the beneficial ownership in order to apply the provisions of India-Mauritius Tax Treaty. Further, in support of such a plea, assessee also relied on the judgment of the Hon'ble Bombay High Court in the case of DIT vs Universal International Music B.V, [2013] 31 taxman.com 223 which held that a company incorporated under the laws of Netherlands and holding valid Tax Residency Certificate issued by the Netherland authorities was to be construed as the beneficial owner of the Royalty income received from the Indian company and was accordingly held entitled to the benefits of Article 12 of the Double Taxation Avoidance Agreement between India and Netherlands. It was pointed out that assessee had obtained Tax Residency Certificate from the Mauritian Revenue authorities, a copy of which was also filed before the DRP. On the aforesaid basis, assessee sought to explain the fulfilment of the condition of 'beneficial ownership'. The DRP, however, rejected the plea of the assessee as according to it, no documents were placed by the assessee to suggest that the interest income in question was beneficially owned by the assessee. As per the DRP, assessee had failed to show the immediate source of funds for making the impugned investment and also the immediate application of the impugned interest income earned by it. Against such observations of the DRP, assessee is in appeal before us.

5. Before us, the learned representative for the assessee reiterated the reliance on the CBDT Circular no. 789 dated 13.04.2000 (supra) whose validity, according to the learned representative, has also been upheld by the Hon'ble Supreme Court in the case of UOI vs Azadi Bachao Andolan, [2003] 263 ITR 706 (SC). Furthermore, it is pointed out that the Ministry of Finance vide Press Clarification dated 01.03.2013 clarified that the CBDT Circular no. 789 dated 13.04.2000 (supra) continues to be in force. Another aspect which is brought out by the learned representative is based on the decision of Chennai Bench of the Tribunal in the case of Hyundai Motor India Ltd. vs DCIT, [2017] 81 taxmann.com 5. In this case, the interest paid by Hyundai Motor India Ltd. to the assessee was disallowed u/s 40(a)(i) of the Act on the ground that the payer therein, i.e. Hyundai Motor India Ltd. had not deducted the requisite tax at source. The Tribunal in the aforesaid decision, inter-alia, examined the provisions of Article 11 of the India-Mauritius Tax Treaty and concluded that the assessee was indeed the 'beneficial owner' of such interest income. The relevant extract of the decision referred to reads as under :-

“The doubts expressed by the DRP with regard to beneficial owner of the interest income are devoid of any legally sustainable basis. No case has been made out by the revenue for the beneficial owner of the interest income being entities other than Mauritian entities in question. In terms

of article 11(3), interest arising in a Contracting State (i.e. India, in this case) shall be exempt from tax in that State (i.e. India) provided it is derived and beneficially owned by, inter alia, by any bank carrying on a bona fide banking business which is a resident of the other Contracting State (i.e. Mauritius). There is no dispute that Mauritian entities in question were carrying out banking business in Mauritius, and there is nothing on record to show, or even indicate, that the beneficial owner of interest income were not these Mauritian entities. The protection of article 11(1) cannot, therefore, be declined on the facts of the present case. We are, therefore, of the considered view that the income embedded in these interest payments are not taxable in India. Accordingly, the assessee did not have any tax withholding obligations, u/s 195, in respect of these payments, and, as a corollary thereto, disallowance u/s 40(a)(i) was not justified.”

6. On the aforesaid basis, it is pointed out that following the decision of Chennai Bench of the Tribunal in the case of Hyundai Motor India Ltd. it is, therefore, to be held that assessee was indeed the ‘beneficial owner’ of the interest income in question also.

7. On the other hand, the Id. DR appearing for the Revenue, has merely reiterated the discussion made by the DRP in its order, which we have already noted in the earlier paras and is not being repeated for the sake of brevity.

8. Article 11(3)(c) of the India-Mauritius Tax Treaty, inter-alia, prescribes that interest income arising in a contracting state shall be exempt from tax in that state provided it is derived and beneficially owned by any bank carrying on a bona fide banking business which is resident of the other contracting state. The limited point before us is as to whether assessee, who is a tax resident of Mauritius, beneficially owns the interest income of Rs.94,57,45,856/- in question. The other pre-requisites of Article 11(3)(c) of the India-Mauritius Tax Treaty are not for consideration before us as they have already been dealt with by our predecessor Bench in its order dated 16.12.2016 (supra). Be that as it may, in support of the proposition that the impugned interest income is beneficially owned by the it, the appellant has primarily relied on the Tax Residency Certificate issued by the Mauritian Revenue authorities certifying the fact that assessee is a tax resident of Mauritius. Copies of such Certificates have been placed in the Paper Book at pages 268 to 270. Factually speaking, there is no dispute on this aspect. The only controversy is whether such Tax Residency Certificate enables an inference that the interest income in question is beneficially owned by the assessee. In this context, the CBDT Circular no. 789 dated 13.04.2000 (supra) of the CBDT is quite eloquent, whose relevant content reads as under :-

“2.It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute

sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.” [underlined for emphasis by us]

Ostensibly, as per the clarification issued by the CBDT, wherever a Certificate of Residency is issued by the Mauritian authority, such Certificate will constitute sufficient evidence for accepting the status of residence as well as the beneficial ownership for applying the provisions of the India-Mauritius Tax Treaty. Thus, in our considered opinion, the aforesaid clarification by the CBDT supports the assertion of the assessee that based on the Certificate of Tax Residency issued by the Mauritian authority there is sufficient evidence to accept the position that the ‘beneficial ownership’ of the impugned interest income is with the assessee.

9. At this point, we may note that the CBDT Circular no. 789 dated 13.04.2000 (supra) is specifically in the context of incomes by way of dividend and capital gain on sale of shares. So, however, in our considered opinion, it would equally apply even in the situation before us where the application of the provisions of the India-Mauritius Tax Treaty is sought to be applied for considering the taxability of interest income as per Article 11(3)(c) of the India-Mauritius Tax Treaty. We say so by drawing strength from the judgment of the Hon'ble Bombay High Court in the case of Universal International Music B.V (supra). The issue before the Hon'ble High Court was relating to the taxability of Royalty income in the context of India-Netherlands Double Taxation Avoidance Agreement. In the said decision also, CBDT Circular no. 789 dated 13.04.2000 (supra) was held applicable in the context of Royalty income. Thus, in our considered opinion, even in the context of the impugned interest income, Circular no. 789 dated 13.04.2000 (supra) of the CBDT is applicable while applying the provisions of Article 11(3)(c) of the India-Mauritius Tax Treaty. On this aspect itself we uphold the plea of the assessee that assessee is the ‘beneficial owner’ of the impugned interest income on the strength of the Tax Residency Certificate issued by the Mauritian authorities.

10. Moreover, in the context of element of interest income earned by the assessee from Hyundai Motor India Ltd., the Chennai Bench of the Tribunal in its decision in the case of Hyundai Motor India Ltd. (supra) has already observed that the recipient therein (i.e. the assessee before us), was the ‘beneficial owner’ of the interest income qua the provisions of Article 11 of the India-Mauritius Tax Treaty. Be that as it may, in view of our aforesaid discussion, we uphold the stand of the assessee that it is the ‘beneficial owner’ of the interest income of Rs. 94,57,45,856/- qua the provisions of Article 11(3)(c) of the India-Mauritius Tax Treaty and thus, such income is not taxable in India.”

5. From the perusal of the above order of the Tribunal, it is evident that the Tribunal has considered the issue of assessee being beneficial ownership of the interest income. The Co-ordinate Bench in an unequivocal manner has held that the assessee is a

'beneficial owner' of the interest income. Undisputedly, the nature of interest income in assessment year under appeal is no different preceding assessment years. Ergo, we do not concur with the argument of Id. Departmental Representative that the Tribunal has not considered the fact in the past that the interest is not beneficially owned by the assessee. In the light of decision of the Co-ordinate Bench on the issue raised in the appeal by Revenue, we find no infirmity in the impugned order. The CIT(A) has granted relief to the assessee by following the order of Tribunal in ITA No.1708/Mum/2016 (supra). The impugned order is upheld and the appeal by the Revenue is dismissed sans merit.

6. In the result, the appeal by the Revenue is dismissed."

In our considered view, the issue involved in the present appeal i.e as to whether Article 11(3)(c) would be applicable in the fact pattern of the case of the assessee before us, as rightly pointed out by the Id. A.R is squarely covered by the orders passed by the Tribunal in the assessee's own case for the preceding years, wherein dealing with identical facts for the said respective years the Tribunal had consistently concluded that pursuant to Article 11(3)(c) of the India-Mauritius tax treaty the interest receipt would not be exigible to tax in India. In so far the claim of the Id. D.R that the Tribunal in its earlier year order for A.Y 2014-15 in ITA No. ITA No. 1319/Mum/2019, dated 20.03.2020 for A.Y 2014-15, had failed to look into and therein adjudicate the claim of the revenue that the assessee had not brought any material which would substantiate that it was the beneficial owner of the interest income and not a conduit company, we are afraid that the same is absolutely misplaced and misconceived. In fact, a perusal of the aforesaid order passed by the Tribunal in ITA No. 1319/Mum/2019, dated 20.03.2020, reveals that the Id. D.R had therein specifically raised a claim that the Tribunal while adjudicating the issue in the preceding years has failed to take into consideration the fact that the assessee has not been able to show that it was the beneficial owner of the interest income. The Id. D.R in the appeal for the said preceding year, in order to buttress his said contention had even filed written submissions before the Tribunal. On a perusal of the order passed by the Tribunal while disposing off the revenue's appeal in ITA No. 1319/Mum/2019, dated 20.03.2020, we find that only after due consideration of the aforesaid claim of the revenue that the issue was thereafter adjudicated upon by the Tribunal. In the backdrop of our aforesaid observations, we are unable to concur with the claim of the Id. D.R that the material aspect that the assessee had failed to substantiate that it was the beneficial owner of the interest income and not a

conduit company was not addressed by the Tribunal while disposing off the appeal for A.Y 2014-15 in ITA No. 1319/Mum/2019. We thus concurring with the aforesaid view of the Tribunal that interest received by the assessee, pursuant o Article 11(3)(c) of the India-Mauritius tax treaty would not be exigible to tax in India, respectfully follow the same.

10. Resultantly, finding no merit in the appeal of the revenue, we dismiss the same.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(N.K PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Place : Mumbai

Date: 08.07.2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//
(Assistant Registrar)
ITAT, Mumbai