

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND

Sh. AMIT SHUKLA, JUDICIAL MEMBER

**ITA No.7397/DEL/2018
[Assessment Year: 2014-15]**

Silver Bella Holdings Limited, C/o-Deloitte Haskins & Sells LLP, Indiabulls Finance Centre, Tower-3, 28 th Floor, Senapati Bapat Marg, Elphinstone Road (W), Mumbai-400013	The Assistant Commissioner of Income Tax, (International Taxation), Circle-3(1)(2), Room No.418, E-2 Block, Civic Centre, J. L. Nehru Marg, New Delhi-110002
PAN-AAQCS7326E	
Appellant	Respondent

Appellant by	Sh Ketan Ved-CA
Respondent by	Sh. Prabha Kant, CIT-DR

Date of Hearing	12.05.2021
Date of Pronouncement	19.05.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged the order dated 07.09.2018 framed u/s 143(3) r.w.s. 144C(13) of the Act for Assessment Year 2014-15.

2. The first challenge is that the assessment order is barred by limitation and the second challenge is in respect of action of the Assessing Officer stating that the

assessee is not the beneficial owner of interest income earned by it and is therefore not eligible to claim the beneficial tax rate of 10% in terms of Article 11 of the India-Cyprus Double Tax Avoidance Agreement (in short 'DTAA').

3. Briefly stated the facts of the case are that the assessee has filed its return of income on 27.11.2014 declaring total income of Rs.24,82,50,000/-. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has only earned interest on CCDS from NTPL. The Assessing Officer was of the opinion that the assessee company has made only one investment since it is incorporated despite being an Investment Company. The assessee was asked to file details justifying that the principal purpose of the company, conduct of its business and the acquisition or maintenance by it of the shareholding or the other property from which income in question has been derived or motivated by sound business principals/reasons and they do not have a primary purpose of obtaining treaty benefits. The assessee filed necessary details with detailed submissions. After considering the details and the submission, the Assessing Officer issued a show cause asking the assessee why the treaty benefit should not be disallowed. The assessee filed detailed reply in support of its claim of treaty benefit. The replies of the assessee do not find favour with the Assessing Officer who disallowed the treaty benefit and assessed the income @20%.

4. The assessee raised objections before the DRP but without any success.

5. Before us, the counsel for the assessee vehemently stated that the assessment order dated 07.09.2018 is barred by limitation in as much as there was no need to frame

a draft assessment order as per provisions of section 144C(13) of the Act. The counsel relied upon various judgments of the Co-ordinate Benches.

6. The DR strongly supported the findings of the lower authorities.

7. We have given a thoughtful consideration to the orders of authorities below. The Assessing Officer proposed that the interest income is to be taxed @ 20% u/s 115A(1)(a)(ii) of the Act as under:-

Particulars	Amount (in Rs.)
As per returned income	
Interest income earned by the assessee	24,82,52,000
Tax at beneficial tax rate as per DTAA (10%)	2,48,25,000
As per Draft assessment order	
Interest income earned by the assessee	21,15,22,610
Tax U/s 115A(1)(a)(ii) @ 20%	4,23,04,522
Decrease in refund on disallowance of DTAA benefit	1,74,79,525

8. Provision of section 144C(1) read as under:-

“144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation [84a Words “ in the income or loss returned” omitted by the Finance Act, 2020, w.e.f. 01.04.2020] which is prejudicial to the interest of such assessee.”

9. A perusal of the aforesaid provisions shows that the Assessing Officer shall forward the draft of the proposed order if he proposes to make any variation in the

income or loss returned. The aforesaid proposal in the draft assessment order clearly show that the Assessing Officer did not intend to make any variation in the income of the assessee, therefore, the assessment order should have been framed as per the provisions of section 153 r.w.s. 143(3) of the Act meaning thereby that the assessment order dated 07.09.2018 is barred by limitation.

10. In the light of the facts mentioned elsewhere when considered within the provisions of section 144C(1) supra, we have no hesitation to hold that the assessment order is barred by limitation.

11. Since, we have held that the assessment is barred by limitation we do not find it necessary to dwell into merits of the case. The appeal filed by the assessee is, accordingly, allowed.

Decision announced in the open court in the presence of representatives of both the sides on 19/05/2021.

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**

Delhi; Dated: 19/05/2021.

Shekhar, Sr. P.S

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi