

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.740 & 741/Chny/2023  
निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15

The Deputy Commissioner of  
Income Tax, International Taxation  
Circle 2(2), Chennai.

Vs. M/s. Worldpart Limited,  
3, Julia House, Themistocles Dervis,  
Nicosia 106600, Foreign Cyprus  
Represented by: M/s. K M Mohandass &  
Co., No. 36, 1<sup>st</sup> Street, Sait Colony,  
Egmore, Chennai 600 008.  
[PAN:AAACW9185B]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. Nos.758, 759 & 760/Chny/2023  
निर्धारण वर्ष/Assessment Years: 2013-14, 2014-15 & 2015-16

M/s. World Part Limited,  
C/o B S R & Company, 9<sup>th</sup> Floor,  
Business Plaza, Westin Hotel  
Campus, 36/3-B Koregaon Park  
Annex, Mundhwa Road, Ghorpadi,  
Pune, Maharashtra 411 001.

Vs. The Deputy Commissioner of  
Income Tax, International Taxation  
Circle 2(2), Chennai.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri Clement Ramesh Kumar, CIT  
Assessee by : Shri R. Sivaraman, Advocate  
सुनवाई की तारीख/ Date of hearing : 23.01.2024  
घोषणा की तारीख /Date of Pronouncement : 29.02.2024

**आदेश /ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

These appeals of the Revenue for assessment years (AY) 2013-14  
and 2015-16 as well as the appeals of the assessee for the assessment

years 2013-14 to 2015-16 arises out of separate orders of the Id. Commissioner of Income Tax (Appeals)-16, Chennai. The impugned order for the assessment year 2013-14 was passed by the Id. CIT(A)-16, Chennai in ITA No.10031/CIT(A)-16/2022-23 dated 26.04.2023 in the matter of an assessment framed under section 147 r.w.s. 144C(3) of the Income Tax Act, 1961 ["Act" in short] dated 12.05.2022. The impugned order for the assessment year 2014-15 was passed by the Id. CIT(A)-16, Chennai in ITA No. 10025/CIT(A)-16/2022-23 dated 10.05.2023 in the matter of an assessment framed under section 147 r.w.s. 144C(3) of the Act dated 13.05.2022. The order for assessment year 2015-16 was passed by the same authority in ITA No. 54/CIT(A)-16/2019-20 dated 26.04.2023 in the matter of an assessment framed under section 143(3) r.w.s. 144C(3) of the Act dated 25.02.2019. It is admitted position that facts as well as issues are quite identical in all the appeals. For the purpose of adjudication, facts from case records of assessment year 2013-14 are culled out in this order.

2. The sole issue as raised for the revenue for assessment years 2013-14 & 2014-15 read as under:

*As maintained by Assessing Officer in his order dated 12.05.2022 that assessee company is only a conduit company, merely for the purpose of obtaining unjustified tax benefits, the income being treated as interest income, ought to be taxed at maximum marginal rate of 40% as other income.*

It is evident that the sole issue that fall for our consideration is to adjudicate whether the assessee is eligible for benefits of Double Taxation Avoidance Agreement [DTAA] or not.

3. The Id. AR, at the outset, placed on record written submissions and submitted that the impugned issue is squarely covered in favour of the assessee by the order of Tribunal in IT(TP)A No. 36/Chny/2018 dated 19.07.2023 for the assessment year 2014-15 and therefore, facts being identical, the same may be followed. The Id. AR drew our attention to the findings of the Tribunal which read as under: -

9. *We have given our thoughtful consideration to the reasons given by the Assessing Officer in light of various arguments advanced by the Ld. Counsel for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that, there is no evidence with the Assessing Officer to treat the shareholders as beneficial owners of interest income earned from FCCD, other than the hypothetical observation in light of definition of beneficial owners and shareholding pattern of assessee company and movement of funds between appellant and those shareholders. It is an admitted fact that neither the Act, nor the DTAA between India and Cyprus defined the term beneficial ownership. Therefore, the term beneficial owner needs to be understood in the context, it was stated internationally. The term is used to mean the entity which is the legal owner of a property and who has dominion and control over the property. The appellant in the present case is a company incorporated at Cyprus and a tax resident of Cyprus. The assessee has invested in FCCD and received interest income thereon for its own exclusive benefit, and not for or on behalf of any other entity, in that sense, the appellant is a true owner of the interest income as it has complete control on the application or use of the income it received. The Assessing Officer's findings to the effect that the appellant is not a beneficial owner of the interest income is solely on the basis of capital infusion and funds received from shareholders and subsequent transfer of funds to shareholders out of interest income. In our considered view, the mere fact that investment was funded out of portion of interest free*

*shareholder loan and share capital does not affect the appellant status as a beneficial owner of interest income, because the entire interest income was the sole property of the appellant and was at its disposal. Further, the mere fact that the appellant as transferred surplus funds to shareholders for reduction of share capital does not mean that the entire interest income has been transferred back to shareholders to allege that the shareholders are the ultimate beneficial owners of interest income. In order to bring the theory of beneficial owner, the important fact needs to be considered is the recipient does not have a full right to use or enjoy the interest that it receives and this interest is not its own. If the recipient of interest income is a beneficial owner of that interest, where he has full right to use and enjoy the interest unconstrained by a contractual or legal obligation to pass on the payment received to another person, the person who receives is the real beneficial owner.*

10. *At this stage, it is relevant to consider the definition of beneficial owner as defined at para 10.2 of the OECD Commentary (2017) on Article 11 of the Model Tax Convention and as per it the meaning of beneficial owner is that, where the recipient of interest does have the right to use and enjoy the interest unconstrained by a contractual or legal obligation to pass on the payment received to another person, the recipient is the beneficial owner of that interest. In the instant case, although the funding for investment in FCCD is fully received from shareholders in the form of capital infusion and loan, but the shareholders fund was fully available with the appellant company at its disposal in investment. Further, interest income received by the appellant company is at its disposal and for benefit. The mere fact that the appellant has transferred surplus funds out of interest income to shareholders for reduction of share capital does not mean that it is a back-to-back transaction between appellant company and shareholders. In our considered view, to treat the appellant company as a beneficial owner, the Assessing Officer has to find that the appellant did not have exclusive possession and control over the interest income received and further the appellant was required to seek approval or obtain consent from any entity to invest its funds or to utilize the interest income received for its own discretion and finally appellant was not free to utilize the interest income received at its sole and absolute discretion. In the present case, the sole basis for the Assessing Officer to arrive at the conclusion that the appellant is not a beneficial owner of the interest income was transfer of surplus fund to shareholders for reduction of share capital. The Assessing Officer alleged that entire interest income after meeting all operating expenses has been transferred back to shareholders. In our considered view, the Assessing Officer is completely erred in coming to the conclusion, on the basis of transfer of funds back to the shareholders without appreciating fact that when the appellant is not in need of any*

*funds, it is free to pay back to its shareholders to reduce share capital. But what is to be seen to consider the appellant is not a beneficial owner is, the control of funds and disposal of interest income. In case, the appellant is having discretion and full control over funds and investments, and further authority to dispose of its income on its own without any control or approval from shareholders, then the assessee can be treated as beneficial owner of said income. In the present case, there is no doubt of what so ever with regard to the fact that, the appellant is having absolute control over interest income and said income was at the disposal of appellant. The fact that the appellant has transferred surplus fund back to shareholders does not affect on appellant status as a beneficial owner of interest income. Therefore, we are of the considered view that the Assessing Officer and CIT(A) are erred in coming to the conclusion that the appellant is not a beneficial owner of interest income and consequently not entitled for benefit of Article 11 of India-Cyprus Tax Treaty.*

*11. At this stage it is relevant to consider the decision relied on by Ld. Counsel for the assessee. The Ld. Counsel for the assessee relied upon the decision of ITAT, Mumbai Benches in the case of M/s. Golden Bella Holdings Ltd vs DCIT in ITA No. 6958/Mum/2017. The tribunal has considered an identical issue in light of interest income earned from FCCD with Indian companies by Cyprus tax resident in light of Article 11 of India-Cyprus Tax Treaty and held that, the mere fact that the investment was funded using the portion of interest free shareholders loan and share capital does not affect the appellant status as a beneficial owner of the interest income as the entire interest income was the sole property of the appellant and the relevant findings of the tribunal are as under:*

*6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below. The appellant-company was incorporated on 01.08.2011 under the laws of Cyprus. Its objective was to undertake business activities of an investment holding company. As at 31.03.2012, the appellant's capital base consisted of equity share capital of USD 7,200 and debt capital of USD 21,500,000 in the form of unsecured interest-free shareholder loans from its immediate shareholder. The appellant has been issued a TRC by the tax authorities in Cyprus. The appellant applied for 5000 CCDs in ABPL, an Indian Pvt. Ltd. company, each having a face value of Rs.10 at a premium of Rs.1,99,990/- per CCD, and carrying a coupon of 15% on the face value, for an aggregate consideration of Rs.100,00,00,000/-. The premium at which the appellant proposed to apply for such CCDs was determined based on a valuation report dated 21.10.2011 obtained by ABPL valuing its equity shares at*

*Rs.1,17,717/- per share using DCF method. The appellant applied for such CCDs on its own account, using a portion of the share capital and the interest-free shareholder loan raised from its immediate shareholder. Even after, the investment was made, the appellant continued to have cash balance of USD 1,354,761 available to it. The said CCDs were allotted to the appellant w.e.f. 28.03.2012. The above details were filed by the assessee before the AO. We find that the appellant invested in CCDs and received interest income thereon for its own exclusive benefit, and not for or on behalf of any other entity. The mere fact that the investment was funded using a portion of an interest-free shareholder loan and share capital does not affect the appellant's status as the "beneficial owner" of interest income, as the entire interest income was the sole property of the appellant. In this context, we may refer to para 10.2 of the OECD Commentary (2017) on Article 11 (Interest) of the 'Model Tax Convention' to appreciate the meaning of "beneficial owner" and the same reads as under : "Where the recipient of interest does have the right to use and enjoy the interest unconstrained by a contractual or legal obligation to pass on the payment received to another person, the recipient is the 'beneficial owner' of that interest". The issue is simple because the mere fact that the CCDs were funded using monies received by the appellant from its immediate shareholder does not make the arrangement a back-to-back transaction. The appellant had the absolute control over the funds received from its immediate shareholder. Further, in the instant case the appellant wholly assumed and maintained the foreign exchange risk on the CCDs (as they were INR denominated), and the counter party risk on interest payments arising on the CCDs. In the instant case, the AO/DRP have failed to prove that (i) the appellant did not have exclusive possession and control over the interest income received, (ii) the appellant was required to seek approval or obtain consent from any entity to invest in ABPL, or to utilize the interest income received at its own discretion and (iii) the appellant was not free to utilize the interest income received at its sole and absolute discretion, unconstrained by any contractual, legal, or economic arrangements with any other third party. In view of the above factual scenario, the transaction between the appellant and ABPL cannot be considered a mere back-to-back transaction lacking economic substance. Therefore, we direct the AO to accept the return of income filed by the appellant for the impugned assessment year disclosing a total income of Rs.15,16,43,840/- from interest on CCDs in ABPL, wherein it has offered such interest to tax @ 10%."*

12. *In this view of the matter and by following the decision of ITAT, Mumbai Benches, we are of the considered view that the transactions between appellant company and its shareholders cannot be considered as back-to-back transactions in order to treat the shareholders as beneficial owners but not the assessee, in respect of interest income earned from FCCD with Indian company. Therefore, we are of the considered view that the appellant is a beneficial owner of interest income received from FCCD and consequently, entitled for benefit of Article 11 of India-Cyprus Double Taxation Avoidance Agreement. Thus, we direct the Assessing Officer to compute tax @ 10% on interest income as per India-Cyprus Tax Treaty, as claimed by the assessee.*

13. *In the result, appeal filed by the assessee is allowed.*

4. The Tribunal thus concluded that the transactions between assessee entity and its shareholders could not be considered as back-to-back transactions in order to treat the shareholders as beneficial owners but not the assessee. The assessee was the beneficial owner of the interest income received from FCCD and therefore, entitled for benefit of Article-11 of DTAA. Accordingly, Ld. AO was directed to compute tax @ 10% on interest income as per India-Cyprus Tax Treaty, as claimed by the assessee.

5. The Id. CIT-DR also filed written submissions, the substantive portion of the same read as under: -

- *Residency of real owners of Income is not established, as it is a consortium formed to take advantage of the Treaty benefits, 'the Income of Rs.22,89,76,090/- is taxed at MMR.*
- *World Part Ltd is incorporated with no definite business purposes laid down in its charter documents, it has no separate legal existence distinct*

*from its Shareholders, hence it is not the “Beneficial Owner” of its Income.*

- *WorldPart does not have any business purpose and neither an adequate level of functions, assets and risks attributable to business. Even though, Worldpart Limited, the direct recipient of the income can qualify as a resident and can obtain the certificate of the tax residence from the tax authorities, this does not automatically mean that it is a beneficial owner of the income.*
- *The Assessee did not determine the subsequent “economic fate” of the Interest Income received. They did not have any contractual or legal obligation to pass on the Interest Income to another person and its ultimate economic fate was at the discretion of the board -and shareholders of the company.*
- *There is a direct correlation between the Interest Income received and Payments made to the Shareholders by the Company. Interest income of assessee is similar to its capital reduction expenses both quantitatively and qualitatively.*
- *Although the Company has a valid “Tax Residency Certificate” which itself depicts that the company has a no separate legal existence that is different from its Shareholders and is thus the sole beneficial owner of any Income earned on any Investments made by the Assessee is ultimately distributed to consortium of its group companies.*
- *Neither Income Tax Act, Nor India-Cyprus Treaty defines the term “Beneficial Owner”. Internationally, the term is used to mean the entity which is the legal owner of the property (in this case being Interest Income) and who has dominion and control over the Property (ie., an owner who holds the property for its own benefit and not as an Agent, Trustee or nominee for some other person, who has the right to deal with the property as its own)*
- *It is seen that the revised draft of the OECD Commentary i.e., Model Tax Convention (Full Version), 2015 at Para 10.2 of Page No. C(II)8 states that the recipient of a passive income is not the "beneficial owner, when the recipient's right to use and enjoy the passive income is constrained by a contractual or legal obligation to pass on the payment received to another person. (Pg 14 of CIT(A) order)*
- *Hence by the above definition, it is clear that Assessee is not the beneficial owner. Therefore, the Consortium formed only to take advantage of the treaty benefits, hence it is prayed that appeal of Department to be allowed.*

However, the fact that the issue is squarely covered in assessee's favour by earlier decision of Tribunal could not be controverted. No change in facts could be demonstrated and it could also not be shown that the aforesaid order of Tribunal was reversed or modified by any higher judicial authority, in any manner. In the said background, the appeals are disposed-off as under.

6. The material facts as noted by the Tribunal in IT(TP)A No. 36/Chny/2018 dated 19.07.2023 are that the assessee has been incorporated in Cyprus and is a tax resident of Cyprus. The assessee company held 1,63,55,435 Fully and Compulsorily Convertible Debentures (FCCD) of INR 100/- each in RGE Construction and Development Pvt. Ltd. (RGE) The assessee earned interest income from FCCD against which RGE deducted TDS of 30% u/s 194A. However, the assessee offered interest income @10% in terms of Article 11 of India-Cyprus DTAA. The Ld. AO noted that the assessee made investment in RGE out of equity and loan funds received from Catalyst Samsara India Opportunity Fund I LP, Jersey, i-Star DH Holdings Trc. Inc. Cayman, Islands and XE Advisors India Private Limited, India and thus, opined that the assessee is not a beneficial owner of interest income received from RGE. The assessee submitted that it was an entity incorporated in

Cyprus and a tax resident of Cyprus and it was a consortium for various shareholders (representing different PE funds) residing in multiple jurisdiction. The primary objective of the shareholder in setting up of the assessee entity was to incorporate an independent project, entering into joint ventures with real-estate developers etc. The appellant company received capital funds from various shareholders and deployed the funds as investment in RGE in FCCD. Further, the appellant was a separate legal entity and maintained its affairs independently without any intervention from the shareholders to manage the funds and thus, just because the surplus funds available with the assessee company has been paid back to the shareholders to reduce share capital, it could not be held that the assessee was a conduit of shareholders and not beneficial owner of interest income earned from FCCD. However, Ld. AO rejected the explanation of the assessee and held that the assessee company merely acted as a conduit or an intermediary to facilitate investments of three shareholders in FCCDs of RGE. The Assessing Officer, further observed that the appellant company has been used by CSIOF I LP and others merely for the purpose of obtaining unjustified tax benefits, specifically of the interest based on Tax Treaty and thus, observed that the assessee is not a beneficial owner of interest income earned from FCCD to give the benefit of Article 11 of India-Cyprus Tax

Treaty. The Assessing Officer arrived at a conclusion that the assessee is only an intermediary for three shareholders which was evident from fact that interest income earned from financial year 2009 to 2014 was distributed by way of capital reduction. Therefore, Ld. AO held that the assessee would not be eligible for tax benefit of Article-11 of DTAA and the aforesaid income would be taxable at normal rates. The Ld. CIT(A) upheld the action of Ld. AO. However, upon further appeal, Tribunal upheld the claim of the assessee. The findings of the Tribunal have already been extracted in earlier part of the order.

7. In assessment order for AY 2013-14 passed u/s 147 r.w.s. 144C(3) on 12.05.2022, Ld. AO, on same facts, has taken similar stand and held that assessee's income was to be taxed at Maximum Marginal Rate. The Ld. CIT(A) held that the assessee was only the legal owner of interest and therefore, the applicable rate of tax would be 20% as laid down u/s 115A. Aggrieved, the revenue is in further appeal before us. The assessee has also filed ground no.2 assailing the findings of Ld. CIT(A) that the assessee was not the beneficial owner of interest income.

8. It is quite clear that this issue is already subject matter of an appeal before Tribunal in IT(TP)A No. 36/Chny/2018 dated 19.07.2023 for the assessment year 2014-15 wherein it was held by the bench that the

transactions between assessee entity and its shareholders could not be considered as back-to-back transactions in order to treat the shareholders as beneficial owners but not the assessee. The assessee was the beneficial owner of the interest income received from FCCD and therefore, entitled for benefit of Article-11 of DTAA. Accordingly, Ld. AO was directed to compute tax @ 10% on interest income as per India-Cyprus Tax Treaty, as claimed by the assessee. Respectfully following the same, the appeal of the revenue for AYs 2013-14 and 2014-15 stands dismissed. The corresponding grounds raised by the assessee in AYs 2013-14 & 2014-15 stand allowed. The assessee, in its appeals, has assailed the validity of reassessment proceedings. The assessee has also assailed levy of interest and initiation of penalty proceedings. Consequent to our adjudication on merits favouring the assessee, all these grounds have been rendered infructuous. The appeals of the assessee for AYs 2013-14 & 2014-15 stands partly allowed.

9. In AY 2015-16, an assessment has been framed by Ld. AO u/s 143(3) r.w.s. 144C(3) on 25.02.2019 taking similar view. The Ld. CIT(A) upheld the same against which the assessee is in further appeal before us. Facts as well as issues being pari-materia the same and therefore, taking the same view, we allow the corresponding grounds of appeal

raised by the assessee. The other grounds have been rendered infructuous. The appeal of the assessee stands partly allowed.

10. In the result, the appeals of the revenue stand dismissed. The appeals of the assessee stands partly allowed.

Order pronounced on 29<sup>th</sup> February, 2024 at Chennai

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, the 29.02.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/  
Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.