

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

**Before Dr. B. R. R. Kumar, Accountant Member,**

**Sh. Sudhir Pareek, Judicial Member**

**ITA No. 1393/Del/2023 : Asstt. Year: 2016-17**

Income Tax Officer, Ward-3(1)(1), International Taxation, New Delhi-110002 (APPELLANT)	Vs	Tata Teleservices Ltd., 124, 10 <sup>th</sup> Floor, Jeevan Bharti, Tower-1, Connaught Circus, New Delhi-110001 (RESPONDENT)
<b>PAN No. AA ACT2438A</b>		

**Assessee by : Sh. Tarun Gulati, Sr. Adv. &**

**Ms. Ananaya Kapoor, Adv.**

**Revenue by : Sh. Vijay B. Vasanta, CIT-DR**

**Date of Hearing: 30.05.2024**

**Date of Pronouncement: 21.08.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-43, New Delhi dated 22.02.2023.

2. Following grounds have been raised by the Revenue:

*"1) Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee by holding that interest payment made to China Development Bank (CDB) is exempt from taxation under Article 11(3) of India China DTAA by observing that China Development bank is a financial institution wholly owned by the Government of China without appreciating the fact that as per the Financial Statement of China Development Bank only 36.45% shares in the said Bank is held by the Government of China (Ministry of Finance) during the relevant period i.e. FY 2015-16.*

*2) Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that China Development Bank is a financial institution wholly owned by the Government of China in view of the amended Article 11(3) of India-China DTAA vide*

*Notification No. S.O. 2562(E) [No. 54/2019/F.No. 503/02/2008-FTD-II) dated 17.07.2019 whereby the aforesaid bank has been stated to be included in the list of financial institution wholly owned by the Govt. of China by ignoring the fact that the aforesaid amendment has been made w.e.f. 17.07.2019 which was not applicable during the relevant Financial Year 2015-16."*

3. Revenue aggrieved with the order of the Id. CIT(A) holding that China Development Bank is a financial institution wholly owned by the Government of China is eligible for beneficial provision for Article 11(3) of India-China DTAA. The Revenue aggrieved that the Ministry of Finance share in the bank was only 36.54% and the remaining shareholding was held by Central Huijin Investment Ltd., Buttonwood Investment Company and National Council for Social Security Fund. The Revenue argued that since as per the Financial Statement of China Development Bank only 36.45% shares in the said Bank is held by the Government of China (Ministry of Finance) during the relevant period i.e. FY 2015-16, CDB cannot claim benefit of the DTAA and hence the assessee is liable to deduct tax u/s 201 r.w.s. 195 of the Income Tax Act, 1961.

4. On going through the record, we find that **the Ministry of Finance** (MOF) is under the State Council, responsible for managing fiscal revenue and expenditure, formulating fiscal and tax policies and exercising fiscal supervision.

**5. Central Huijin Investment (Huijin)** is a wholly state-owned limited liability company Incorporated in accordance with the Company law of the People's Republic of China. As authorized by the State Council. It represents the government as an investor in key state- owned financial institution, and in

compliance with applicable laws and regulations, helps preserve and increase the value of state-owned financial assets

**6. Buttonwood Investment Holding Company (BH)** is a limited liability company incorporated in accordance with the Company law of the People's Republic of China. It is solely funded by The State Administration of Foreign Exchange, and mainly focuses on investments in domestic and overseas projects, equity investments, debt investments, fund investments, loan investment, and asset management and investments.

**7. The National Council for Social Security Fund (NCSSF)** is the operation arm of the National Social Security Fund and is also directly under the leadership of the State Council, as well as under the supervision of the State Council or its authorized agencies.

8. The audited financial statements of CDB for the year 2016 clearly states that Central Huijin Investment is a whole owned subsidiary of China Investment Corporation and Buttonwood Investment Holding Company Ltd. is a wholly owned subsidiary of State Administration of Foreign Exchange of China.

9. The relevant portions are reproduced below:

*"Huijin is a wholly owned subsidiary of China Investment Corporation, with a registered capital of RMB26 209 million its principal activities are equity investments as authorized by the Chinese State Council and it does not engage in other commercial operations. Huijin exercises its rights and assumes the obligations as an investor of the Bank on behalf of the PRC Government."*

(3) Buttonwood Investment Holding Company Ltd.

*"Buttonwood Investment Holding Company Ltd. is a wholly owned subsidiary of the State Administration of Foreign Exchange of China. Its principal activities are domestic and overseas investments in project, equity, debt, loan and fund, fiduciary management and investment management."*

10. Further, with respect to shareholder, National Council for Social Security Fund, the bye laws of National Council for Social Security Fund clearly provides that the same is a public institution directly under the state council and accordingly, wholly owned by the Government of China.

11. Even the Protocol to India-China DTAA inserted vide Notification No. S.O. 2562(E) [No.54/2019/F.No. 503/02/2008-FTD-II], Dated 17-7-2019, specifically provides that **CDB** is a financial institution wholly owned by the Government of China. It is noteworthy that Article 11(3) of India-China DTAA was amended vide Notification No. S.O. 2562/E) [No.54/2019/F.No: 503/02/2008-FTD-II] dated 17-7-2019 and prior to such amendment. Article 11(3) of India-China DTAA stated as under:

*"3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political sub-division, a local authority and the Central Bank thereof or any financial institution wholly owned by that Government, or by any other resident of that other Contracting State with respect to debt claims indirectly financed by the Government of that other Contracting State, a political sub- division, a local authority, and the Central Bank thereof or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.*

*....."*

12. Accordingly, in terms of para 3 of Article 11 of India-China tax DTAA as it stood during the relevant FY, any interest income arising in India but derived by any financial institution wholly owned by the Government of China shall be exempt from tax in India. Thus CDB being a financial institution wholly owned by Government of China is clearly covered under the above exemption and hence, the interest payment made by the assessee to China Development Bank was not taxable in India.

13. In this connection, it is noteworthy that the above Article 11(3) of India-China DTAA, was amended vide Notification No. 5.0. 2562(E) (No.54/2019/F.No. 503/02/2008-FTD-II dated 17-7-2019 and post amendment i.e. from 17-7-2019, the Article 11(3) stands as under:

*"3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government, a political subdivision or a local authority, the Central Bank or any financial institution wholly owned by the Government of the other Contracting State, or paid on loans guaranteed or insured by the Government, a political subdivision or a local authority, the Central Bank or any financial institution wholly owned by the Government of the other Contracting State, shall be exempt from tax in the first-mentioned State."*

14. Accordingly, in view of the above, both erstwhile Article 11(3) and amended Article 11(3) of the Indian-China DTAA provides that interest arising in India and derived/paid to any financial institution wholly owned by the Government of China is exempt from tax on the interest earned.

15. Further, in the Protocol to the India-China DTAA, paragraph 3 was simultaneously inserted by deleting the erstwhile paragraph 3 vide the same notification itself i.e. Notification No. 10. 2562(E)(No.54/2019/F.No. 503/02/2008-FTD-II). Dated 17-7-2019, which defined the term 'Central bank' and 'Any financial institution wholly owned by the Government of the other Contracting State' as under:

"....."

3. For the purpose of paragraph 3 of Article 11 (Interest):

(a) the term "Central Bank" means, in the case of China, the People's Bank of China, and in the case of India, the Reserve Bank of India

(b) the term 'any financial institution wholly owned by the Government of the other Contracting State' means:

(i) in the case of China:

**(A) the China Development Bank:**

(B) the Agricultural Development Bank of China:

(C) the Export-Import Bank of China:

(D) the National Council for Social Security Fund:

(E) the China Export & Credit Insurance Corporation:

(F) the China Investment Corporation:

(G) any other institution wholly owned by the Government of China as may be agreed from time to time between the competent authorities of the Contracting States."

16. In view of the above, paragraph 3 of the Protocol for the purpose of Article 11(3) of India-China DTAA inserted in 2019 has also clearly clarified that **China Development Bank** is a financial institution wholly owned by Government of China. Paragraph 3 of the Protocol as reproduced above uses the word "means" and not 'includes' or 'deemed to be included" which suggests that CDB is and has always been a financial institution wholly owned by the Government. Also, with the inclusion of the above definition and for the purpose of defining the term financial institution wholly owned by the Government, the protocol restricted the scope of the financial institutions covered under Article 11(3) of India-China DTAA to include the specified institutions or any other institution wholly owned by the Government of China as may be agreed from time to time between the competent authorities of the Contracting States.

17. Therefore, the specific institutions listed in the protocol for both India and China, were always covered as a government owned financial institution for the purpose of Article 11(3) of India- China DTAA. The Article as if stood during the relevant FY was more expansive and after the definition of financial institution wholly owned by the Government in the protocol, wherein **China Development Bank** is specifically included, it is clear and beyond doubt that **China Development Bank** is and has always been a financial institution wholly owned by the Government and hence, eligible for the benefit for the provisions of Article 11(3) of India-China DTAA and therefore, the appellant cannot be treated "assessee in default" with

respect to non-deduction of tax u/s 195 of the Act on interest payments made to China Development Bank.

18. The decision of the Id. CIT(A) is hereby affirmed.

19. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 21/08/2024.

**Sd/-**

**(Sudhir Pareek)**  
**Judicial Member**

**Sd/-**

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 21/08/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**