

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "डी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER  
आअसं.2661/दिल्ली/2024(नि.व. 2021-22)  
ITA No. 2661/DEL/2024 (A.Y.2021-22)

Gagil FDI Ltd.,  
5 Themistokli Dervi, Elenion Building, CY 1066,  
Nicosia, Cyprus 1066

PAN: AAECG-7704-L

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,  
Circle International Taxation 1(3)(1),  
Delhi

..... प्रतिवादी/Respondent

Assessee by : Shri Dhanesh Bafna, Ms. Hirali Desai, Shri Yogesh Malpnai,  
Ms. Priyanka Agarwala and Shri Jay Ruparelia,  
Chartered Accountants

Department by : S/Shri Vijay B Vasanta, CIT(DR) & Rajesh Kumar, Sr. DR

सुनवाई की तिथि/ Date of hearing : 07.02.2025

घोषणा की तिथि/ Date of pronouncement: : 07.05.2025

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the assessment order dated 29.04.2024 passed u/s. 143(3) r.w.s 144C(13) of the Income Tax Act,1961(hereinafter referred to as 'the Act'), for assessment year 2021-22.

2. The assessee in appeal has raised nine grounds assailing addition on merits as well as raising jurisdictional issues. Shri Dhanesh Bafna appearing on behalf of the assessee submits at the outset that he is not pressing ground of appeal 1 to 4

challenging validity of assessment. Thus, grounds of appeal left for adjudication before the Tribunal are as under:-

- “5. Without prejudice to the above, on the facts and circumstances of the case & in law, the Ld. AO and the Ld. DRP grossly erred in denying the benefit under Article 13 of the India-Cyprus Double Taxation Avoidance Agreement (Tax Treaty') read with Ad. Article 13 of the Protocol to the Tax Treaty on long term capital gains earned on sale of shares of a third-party company and assessing the same under the provisions of the Act.**
- 6. On the facts and circumstances of the case & in law, the Ld. AO and Ld. DRP grossly erred in denying the benefit of Article 10 of the Tax Treaty on dividend income earned on the shares of a third-party company and in assessing the same under the provisions of the Act.**
- 7. On the facts and circumstances of the case & in law, the Ld. AO grossly erred in charging interest under sections 234A of the Act of INR 5,36,12,750.**
- 8. On the facts and circumstances of the case & in law, the Ld. AO grossly erred in charging interest under sections 234B of the Act of INR 39,67,34,350.**
- 9. On the facts and circumstances of the case & in law, after having framed the impugned erroneous assessment, the Ld. AO grossly erred in proposing to initiate penalty proceedings under section 270A of the Act for alleged under reporting of income.”**
3. The facts of the case as emanating from records are: The assessee is a company incorporated in Cyprus as an investment holding company. The assessee carries out investment activities and holds investment in securities in Indian company. The assessee is a wholly owned subsidiary of GA Global Investments Ltd. (in short 'GA Global') a company incorporated under the provisions of Cyprus company law. The assessee being a tax resident of Cyprus holds a Tax Residency Certificate (TRC) issued by Cyprus Revenue Authorities for the relevant assessment year. A copy of TRC is at pages 11 & 12 of the paper book. In the year 2014, the assessee acquired equity shares of National Stock Exchange (NSEIL)

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from its holding company GA Global in month of June 2014 for a consideration of Euro 12,25,10,000. A copy of contribution agreement dated 05.12.2012 entered into between the assessee and its holding company GA Global for purchase of share of NSEIL is at pages 85 to 87 of the paper book. The assessee acquired shares of NSEIL in exchange of 10,00,000 redeemable preference shares of Euro 20,000 share capital and Euro 12,24,90,000 share premium, aggregating to Euro 12,25,10,000.

3.1. During the period relevant to assessment year under appeal, the assessee sold shares of NSEIL in five trenches to unrelated independent third party buyers as under:-

Date of Sale	Name of the Buyer	No of shares sold	Gross Consideration
28 September 2020	238 Plan Associates LLC	260,000	USD 4,761,663
	Massachusetts Institute of Technology	1,440,000	USD 19,046,651
01 October 2020	Sirius Ark Family Private Trust	800,000	INR 791,200,000
	Vedantara Family Private Trust	650,000	INR 642,850,000
	Vineeta Nayyar Family Private Trust	800,000	INR 791,200,000
08 October 2020	2726247 Ontario INC	7,568,382	USD 99,109,054
27 October 2020	Crown Capital Limited	4,134,000	USD 54,683,783
01 December 2020	Sirius Ark Family Private Trust	1,000,000	INR 1,010,000,000
	Vedantara Family Private Trust	1,000,000	INR 1,010,000,000
	Vineeta Nayyar Family Private Trust	1,000,000	INR 1,010,000,000

The assessee filed return of income for AY 2021-22 and disclosed Long Term Capital Gain on sale of equity shares of NSEIL and claimed benefit under Article 13 of India-Cyprus DTAA. The assessee had also earned dividend income from NSEIL and offered the same to tax at the rate of 10% in accordance with India-Cyprus DTAA. The Assessing Officer (AO) while passing Draft Assessment Order u/s. 144C(1) of the Act, after examining the ownership structure of the

assessee, list of Directors of the company, beneficiary of the transactions of sale of shares came to the conclusion that the ultimate beneficiary of the transaction of sale of shares on NSEIL is General Atlantic Company based in USA. The entire profits i.e. Long Term Capital Gain on sale of shares is routed through the assessee based in Cyprus to its controlling company General Atlantic Company. To reach such a conclusion, the AO examined the management pattern of the assessee company. According to AO, the Directors of General Atlantic Company USA are the Directors of the assessee based in Cyprus. The decision making process for the assessee is primarily carried out by the Directors of General Atlantic Company. Even the authorized signatory for operating bank accounts is not based in Cyprus. One Mr. Albert Lawrence Brehmer JR who is in Panel B is authorized by the Board to operate bank account. However, the said person is not director of the assessee company and is based in US and is VP Finance & Accounting of General Atlantic USA. The AO finally concluded that the assessee's company is run, controlled and managed by General Atlantic USA. The assessee is merely a shell company established in Cyprus with an intention of circumventing Indian tax laws using India-Cyprus DTAA as a tool. Thus, the AO denied India-Cyprus DTAA benefit to the assessee on the transaction of sale of shares of NSEIL and added Long Term Capital Gain of Rs.9,59,55,30,325/- in the total income of the assessee. Further, the AO denied treat benefit on the dividend income earned by the assessee on the shares of NSEIL and made addition of Rs.20,62,76,200/-. Thus, the AO made aggregate addition of Rs.980,18,06,525/- in the income declared by the assessee.

4. Aggrieved by the Draft Assessment Order dated 16.06.2023, the assessee filed objections before the DRP. The DRP vide directions dated 28.03.2024 confirmed the findings of the AO. The AO vide impugned assessment year

assessed total income of the assessee at Rs.980,18,06,525/-. Hence, present appeal by the assessee.

5. The Id. Counsel for the assessee submits that the assessee had purchased shares of NSEIL in 2014 from its group/holding company GA Global based in Cyprus. The assessee was incorporated in 2012 in Cyprus and is having Tax Residency Certificate from the Revenue Authorities in Cyprus. The GA Global had purchased shares of NSEIL from institutional investors through private arrangement. Before transfer of shares to GA Global a detailed scrutiny was carried out by SEBI, RBI FIPB Unit of Department of Economic Affairs, Ministry of Finance, Govt. of India. The approval from FIPB is at page 713 to 715 of the paper book and approval from SEBI is at page 717 of the paper book. The RBI granted approval for transfer of shares of NSEIL to GA Global vide approval letter dated 29.03.2007 is at page 718 part II of the paper book. He further referred to Securities Contracts (Regulation) (Stock Exchange & Clearing Corporations) Regulations, 2012 under which SEBI tests the fitness of a person to whom shares of stock exchange are to be allotted. He also referred to Securities Contracts (Regulation) (Manner of Increasing and Maintaining Shareholding in Recognized Stock Exchange) Regulations, 2006, whereby SEBI keeps check over the shareholding pattern of stock exchange by each group directly or indirectly.

5.1. The Id. Counsel asserted that even at the time of transfer of shares by GA Global to the assessee, again the entire process of scrutiny was carried out and after examining the transaction and antecedents of the assessee, RBI granted approval on 30.03.2014 (at page 719 of the paper book) and by the FIPB Unit, Department of Economic Affairs, Ministry of Finance, Govt. of India on 02.04.2013 at page 80 of the paper book. The Id. Counsel submitted that every year the

assessee has to seek fitness from NSEIL under Regulation 20 of Securities Contracts Regulation (Stock Exchange in Clearing Corporations) Regulations 2012. The communication seeking fitness from Financial Year 2015-16 onwards is at pages 779 to 792 part II of the paper book.

5.2. The Id. Counsel for the assessee referring to the observations of the AO in Draft Assessment Order submits that the findings of the AO are not based on correct facts. He refuted the observations of the Assessing Officer that General Atlantic Company based in USA is managing the assessee company in Cyprus. He vehemently denied there is no company by the name of General Atlantic in US is having control over the assessee. He submitted that the assessee was incorporated in Cyprus with primary objective of making and holding investments. The assessee is holding TRC issued by Revenue Authorities in Cyprus. He pointed that for applying tax residency certificate, the assessee has to give a declaration/confirmation wherein, if, any facts are wrongly declared the assessee would be liable for committing criminal offense. The Id. Counsel referred to the application for seeking tax residency certificate at pages 738 & 739 to the paper book. The Id. Counsel further submitted that the DRP vide its directions dated 28.03.2024 has erred in observing that the paper work carried out by Govt. agency viz. SEBI, FIPB and RBI are routine paper book involving minimal verification, scrutiny and intervention on the part of the Govt. Thus, the DRP gave no importance to the approvals granted by aforesaid Govt. agencies and merely relied on the observations of the Assessing Officer, which are based on wrong appreciation of facts. The Id. Counsel contended that the AO and the DRP have erred in not granting India-Cyprus DTAA benefit to the assessee on the transaction of sales of shares of NSEIL and dividend income received by the assessee on shares of NSEIL during the relevant period. The AO without even

looking at the minutes of Board of Directors wherein the entire proceedings and operations of the assessee company are authorized and approved by the Board of Directors based in Cyprus has come to the conclusion that the assessee is a conduit based in Cyprus of a beneficiary company, based in USA.

6. Per contra, Shri Vijay B Vasanta representing the department vehemently defending the impugned order submits that the AO has been able to show that General Atlantic Fund of USA is controlling assessee based in Cyprus. The USA based fund in order to take benefit of India Cyprus DTAA as established the assessee company which is merely a paper company based in Cyprus. The USA India DTAA does not provide protection to fund investments; therefore, the USA based company has taken a Cyprus route to circumvent Indian Tax Laws. The Id. DR referring to the findings of AO pointed that the address of the assessee in Cyprus and the agency which was providing professional secretarial services to the assessee both find mention in the infamous Panama leaks. The names of all companies appearing in Panama papers were shell companies. This gives impetus to the finding of AO that there is no physical presence of assessee in Cyprus. The Id. DR thus, vehemently placing reliance on the assessment order and findings of the DRP prayed for dismissing appeal of the assessee.

7. Rebutting submissions made by Id. DR, the Id. Counsel for the assessee asserted that the fund referred to by the DR are not based in US. There are based in different jurisdiction viz. Bermuda (91.15%), Germany (8.65%) and Delaware (0.20%). He further pointed that only two regular Directors are from USA, the third director from USA is an alternate director. All other Directors are from Cyprus only. Referring to the gist of Board Minutes at page 195 to 197 of the paper book, he pointed that during Financial Year 2020-21, USA director did not

attended Board meetings except once. The entire decision making process was carried out by the Board comprising of Directors based in Cyprus. Therefore, by no stretch of imagination it can be said that management of the assessee company is based in USA. In respect of the submissions of Id. DR with regard to Offshore Leaks Database often referred to as 'Panama leaks', the Id. Counsel for the assessee placed on record Offshore Leaks Database FAQs, wherein he pointed that in response to a question with regard to whether the companies mentioned in database are involved in tax avoidance or evasion, the answer is no. The ICIJ remarked that it does not intend to suggest or imply that the people and companies included in the database have broken the law or otherwise acted improperly. There are legitimate reasons to use offshore companies and trusts. The Id. Counsel at this juncture points that Reserve Bank of India vide communication dated 29.03.2007 (page no. 718 of the paper book) vide single order had granted approval to GA Global and Saif II Mauritius Company Ltd. for acquiring shares in NSEIL. As is the case of assessee, Saif II Mauritius Company Ltd. transferred shares of NSEIL to its subsidiary Saif II-Se Investments Mauritius Ltd., when the said subsidiary sold shares of NSEIL, the Revenue raised similar objection of treaty shopping as is in the case of assessee and denied the benefit of Article 13(3A) of India Mauritius DTAA. The Tribunal in the case title *Saif II-Se Investments Mauritius Ltd. vs. ACIT, 154 taxmann.com 617 (Delhi-Trib)* held that allegations are vague hence, treaty benefit cannot be denied. The Revenue carried the issue in appeal before the Hon'ble High Court, the Hon'ble High Court upheld the Tribunal order and dismissed the appeal of Revenue. The Id. Counsel further referred to the decision of Hon'ble Delhi High Court in the case of *Tiger Global International III Holdings vs. The Authority for Advance Rulings (Income Tax & Ors.)* wherein he pointed that in a similar case the allegations were leveled



by AAR that Tiger Global International III Holdings (in short 'Tiger Global') based in Mauritius was conduit of a company based in USA only for the purpose of treaty benefit. The Revenue there in alleged that the bank authorized signatory was based in USA and not in Mauritius. The Hon'ble High Court rejecting Revenue's contention held that, 'its decision of the Board of Director to authorize a person as bank signatory and there is nothing wrong in appointing any person by the Board as bank signatory even if, he is not resident of Mauritius'. The Id. Counsel asserted that the assessee has no link with Panama leaks. ABACUS Cyprus Ltd. and ABACUS Ltd. are two different companies. In fact there are several companies in Panama leaks whose name start with ABACUS. The assessee has nothing to do with ABACUS Cyprus Ltd. The assessee had engaged ABACUS Ltd a professional service provider based in Cyprus for providing professional secretarial services. The Id. Counsel pointed that the AO in schematic picture at page 22 of the assessment order has referred to ABACUS Cyprus Ltd., whereas, professional engaged by the assessee is ABACUS Ltd. which the AO has also mentioned in text on the same page. The AO has failed to take note of the fact that ABACUS Ltd. and ABACUS Cyprus Ltd. are two different entities. He thus, finally submitted that the assessment order is based on wrong appreciation of facts.

8. Both sides heard, orders of the authorities below examined. In so far as fact of sale of shares of NSEIL by the assessee and the valuation thereof, there is no dispute. The solitary dispute that has emerged for our consideration is limited to the extent that; Whether in facts of the case, the assessee is entitled to benefit under India Cyprus DTAA? The contention of the Revenue is that since situs of the funds and ultimate beneficiaries is in USA, the assessee is merely a conduit to exploit benefit under India Cyprus DTAA. Hence, the AO denied assessee's claim of exemption on Long Term Capital Gain on sales of shares of NSEIL and dividend

income on the shares of NSEIL. Whereas, the stand of the assessee is that it is an independent entity based in Cyprus engaged in making and holding investments, is having valid TRC, therefore, the assessee is entitle to treaty benefit.

9. The Revenue in order to show that the assessee is controlled from USA has alleged that the Directors of the assessee namely; Michael Gosk, Andy Papdakos and Christopher Lanning are the Directors/CFO of General Atlantic based in USA and are involved in all major decision making activities. Therefore, the “mind” of the assessee is based in USA. The citus of the funds used by the assessee for making investment is also based in USA. The assessee is merely a pass through entity for taking advantage of India Cyprus DTAA. The Id. Counsel for the assessee during the course of his submissions demonstrated that for making investment in the share of NSEIL a through scrutiny is carried out by various Indian regulatory agencies under different statutory provisions. The primary purpose for carrying out such scrutiny by Indian agencies is to ascertain genuineness of the investment making entity. GA Global, holding company of the assessee which is also based in Cyprus had purchased shares of NSEIL. At the time of purchase of shares by GA Global, RBI, SEBI and FIPB Unit, Department of Economic Affairs, Ministry of Finance had made detailed investigation and thereafter approved investments made by GA Global in NSEIL. Similarly, when GA Global transferred share of NSEIL to the assessee, similar exercise was carried out all the aforesaid Indian agencies. This fact is evident from the approvals placed on record by the assessee in the paper book. The assessee has placed on record Securities Contracts (Regulation) (Stock Exchange & Clearing Corporations) Regulations, 2012 under which SEBI grants approval for investment in shares of Stock Exchange. For the purpose of regulating ownership and governance in stock exchange, SEBI has laid down

eligibility criteria for holding shares. The relevant regulations are extracted herein under:

“Eligibility For Acquiring Or Holding Shares.

19. (1) No person shall, directly or indirectly, acquire or hold equity shares of a recognised stock exchange or recognised clearing corporation unless he is a fit and proper person.

(2) Any person who, directly or indirectly, either individually or together with persons acting in concert, acquire equity shares such that his shareholding exceeds two per cent of the paid up equity share capital of a recognised stock exchange or recognised clearing corporation shall seek approval of the Board within fifteen days of the acquisition.

(3) A person eligible to acquire or hold more than five per cent. of the paid up equity share capital under sub-regulation (2) of regulation 17 and sub-regulation (2) of regulation 18 may acquire or hold more than five per cent. of the paid up equity share capital of a recognised stock exchange or a recognised clearing corporation only if he has obtained prior approval of the Board.

(4) Any person holding more than two per cent. of the paid up equity share capital of the recognised stock exchange or the clearing corporation on the date of commencement of these regulations, shall ensure compliance with this regulation within a period of ninety days from the date of such commencement.

(5) If approval under sub-regulation (2) or (4) is not granted by the Board to any person, such person shall forthwith divest his excess shareholding.

(6) Any person holding more than two per cent. of the paid up equity share capital in a recognised stock exchange or a recognised clearing corporation, as the case may be, shall file a declaration within fifteen days from the end of every financial year to the recognised stock exchange or recognised clearing corporation, as the case may be, that he complies with the fit and proper criteria provided in these regulations.

Fit And Proper Criteria.

20. (1) For the purposes of these regulations, a person shall be deemed to be a fit and proper person if—

(a) such person has a general reputation and record of fairness and integrity, including but not limited to—

(i) financial integrity;

(ii) good reputation and character; and

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(iii) honesty;

(b) such person has not incurred any of the following disqualifications—

(i) the person, or any of its whole time directors or managing partners, has been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against the securities laws;

(ii) an order for winding up has been passed against the person;

(iii) the person, or any of its whole time directors or managing partners, has been declared insolvent and has not been discharged;

(iv) an order, restraining, prohibiting or debarring the person, or any of its whole time directors or managing partners, from dealing in securities or from accessing the securities market, has been passed by the Board or any other regulatory authority, and a period of three years from the date of the expiry of the period specified in the order has not elapsed;

(v) any other order against the person, or any of its whole time directors or managing partners, which has a bearing on the securities market, has been passed by the Board or any other regulatory authority, and a period of three years from the date of the order has not elapsed;

(vi) the person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force; and

(vii) the person is financially not sound.

(2) If any question arises as to whether a person is a fit and proper person, the Board's decision on such question shall be final."

10. Further, under Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognized Stock Exchange) Regulations, 2006 SEBI has restricted the shareholding in Stock Exchange. The relevant provision in this regard reads as under:-

"9. Eligibility criteria for persons acquiring or holding more than five per cent. equity shares in a recognised stock exchange.-(1) No person shall, directly or indirectly, either individually or together with persons acting in concert with him, acquire and/or hold more than five per cent. of the paid up equity capital of a recognised stock exchange

*after commencement of these regulations, unless he is a fit and proper person and has taken prior approval of the Board for doing so.]*

*(2) For the purpose of sub-regulation (1), a person shall be deemed to be a fit and proper person if –*

*(i) such person has a general reputation and record of fairness and integrity, including but not limited to –*

*(a) financial integrity;*

*(b) good reputation and character; and*

*(c) honesty.*

*(ii) such person has not incurred any of the following disqualifications –*

*(a) the person or any of its whole time directors or managing partners has been convicted by a Court for any offence involving moral turpitude or any economic offence, or any offence against the securities laws;*

*(b) an order for winding up has been passed against the person;*

*(c) the person or any of its whole time directors or managing partners has been declared insolvent and has not been discharged;*

*(d) an order, restraining, prohibiting or debarring the person, or any of its whole time directors or managing partners from dealing in securities in the capital market or from accessing the capital market has been passed by the Board or any other regulatory authority and a period of three years from the date of the expiry of the period specified in the order has not elapsed;*

*(e) any other order against the person or any of its whole time directors or managing partners which has a bearing on the capital market, has been passed by the Board or any other regulatory authority and a period of three years from the date of the order has not elapsed;*

*(f) the person has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; and*

*(g) the person is financially not sound.*

*(3) If any question arises as to whether a person is a fit and proper person, the Board's decision on such question shall be final."*

A bare perusal of above regulations show that the investing institutions/persons have to pass rigour scrutiny before approval is granted to them for making investment in shareholding of Stock Exchange. Any shell company making an endeavor to make such investment shall be caught.

11. The Id. Counsel has drawn our attention to the observations made by the DRP with regard to the approvals granted by various agencies viz. RBI, SEBI and FIPB. The DRP in para 8.4.3 of the directions observed as under:-

*“The claim of assessee that there was intense scrutiny at the time of registration is a misguided contention. The assessee has repeatedly with vehement emphasis and in great detail pointed out in its oral and written submissions that the paperwork done by SEBI, FIPB and RBI in its case as though it was special work done by the regulatory authorities. It is common knowledge that this kind of paperwork by government agencies world over is actually routine paperwork involving minimal verification, scrutiny and intervention on part of the Governments.”*

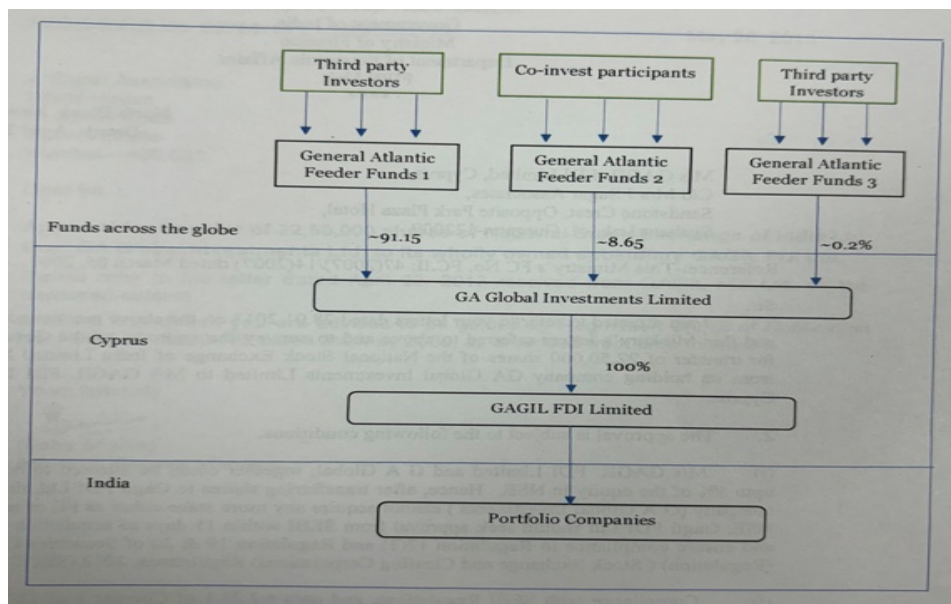
We do not concur with the aforesaid observations made by DRP. SEBI, RBI and FIPB are reputed agencies performing various regulatory functions. The approvals granted by the said agencies cannot be undermined and procedure of granting approval by said agencies cannot be termed as mere paper work. The DRP has erred in giving no weightage to the approvals granted by these agencies and has accepted observations by the AO as sacrosanct. As has been observed by us in preceding paragraphs above, SEBI before granting approval for investment in Stock Exchanges conduct fitness test of the person/institution on various parameters. It is not merely a paper work. Similarly RBI examine investments from various dimensions including violations under FEMA, etc. The approach of the DRP in our view is superfluous. The approvals by regulators like SEBI, RBI, etc. are granted after intense scrutiny and therefore cannot be overlooked.

12. Dehors, the approvals granted by Indian regulatory agencies at a time of transfer of shares of NSEIL, the assessee has also shown that the decisions of investment/disinvestment for assessee were carried out in Cyprus. The assessee has placed on record the gist of Board meetings, key decisions made therein and the name of Directors who participated in meetings during Financial Year 2020-21 i.e. relevant to AY 2021-22 at pages 196 and 197 of the paper book. A perusal of the same reveals that only one Director from USA i.e. Mr. Andy Papadacos, was present only in meeting held on 03.08.2020, wherein the issue regarding transfers of shares of NSEIL was discussed. In so far as other Board Meetings held during FY 2020-21, only Directors based in Cyprus were present in the meeting. The assessee has also placed on record Minutes of the Board Meetings holding during FY 2020-21, at pages 442 to 475 of the paper book. Therefore, from a bare perusal of the said details it is evident that the assessee company was managed in Cyprus and not the USA. The Assessing Officer's observation that the assessee is managed by a company in the USA is misconceived and contrary to facts on record.

13. The AO has also observed that the assessee had engaged professional services of ABACUS Ltd. based in Cyprus whose name is mentioned in Panama leaks. The AO in order to substantiate his findings has also given a pictorial chart which refers to one company "ABACUS Cyprus Ltd". A bare perusal of said chart reveals that the name of professional agency mentioned in chart or Panama leaks is ABACUS Cyprus Ltd., whereas the assessee has obtained Professional Secretarial Services from ABACUS Ltd. These two companies are different entities. However, there is no finding by the AO or the DRP to link ABACUS Ltd. with ABACUS Cyprus Ltd. or even remotely to say that these are same group companies.

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14. The AO has alleged that the source of funds for investments have generated from US based company i.e. General Atlantic, hence, the real beneficiaries are based in US. The Id. Counsel for the assessee in response to the said observation of the Assessing Officer pointed that funds are sourced from across the globe i.e. from Bermuda (91.15%), Germany (8.65%) and Delaware (0.21%). The structural flow chart of the funds is as under:-



Once it is established that the assessee company is carrying its business activities in Cyprus and undisputedly assessee is having TRC issued by Revenue Authority at Cyprus, and is not merely a pass through entity, the allegation of Revenue that it is merely a pass through entity has no feet to stand.

15. In the case of Saif II-Se Investments Mauritius Ltd. vs. ACIT (supra), the coordinate Bench of the Tribunal in somewhat similar case where holding company i.e. Saif II Mauritius Company Ltd. had made investment in the shares of NSEIL and had subsequently transferred the shares to its one of the subsidiary



based in Mauritius. Later on, the subsidiary (Saif II-Se Investments Mauritius Ltd.) sold share in NSEIL. The Mauritius Company did not offer Long Term Capital Gain on sale of such shares to tax under the shelter of Article 13(4) of India Mauritius Tax Treaty. The AO rejected assessee's claim of exemption and taxed Long Term Capital Gain on sale of shares of NSEIL. When the issue travelled to the Tribunal, the Tribunal accepted assessee's claim observing as under:-

*"17. Assessee's parent company subsequently transferred the shares of NSE to the assessee in the year 2009. At the time of transfer of shares from SAIF II to the assessee, the regulatory authorities again carried out due diligence and approved the transfer of shares. Again at the time of part sale of shares of NSE by assessee in the impugned assessment year, the regulatory authorities carried out the necessary verification as per the laid out procedure and approved the sale. Thus, as could be seen from the aforesaid facts, not only the acquisition of shares by the assessee, but even sale of shares was approved after thorough inquiry by various regulatory authorities in India.*

*18. Thus, it has to be assumed that while granting approval the regulatory authorities have gone into the share holding and financial structure of the assessee and its parent companies and all other relevant factors. Thus, when the assessee holds a valid TRC all and Category 1 GBL and, moreover, the entire process relating to acquisition of shares of NSE and its sale went through a process of scrutiny and approval by various Government Authorities and Agency, doubt entertained by the Assessing Officer regarding residential and commercial status of the assessee company is quite surprising. The findings of the departmental authorities that the assessee is a conduit company lacking commercial substance runs in the teeth of approval granted by various Government agencies and authorities approving the purchase and sale of shares by assessee. Rather, the observations of the departmental authorities that assessee is a conduit implies that various other Government agencies have approved the purchase and sale of shares by the assessee, that too, of a Government company, without undertaking a reality check. In other words, the Assessing Officer is pointing an accusing finger to other Government agencies. This, in our view, is preposterous, hence, unacceptable.*

19. It is a fact on record that the assessee is holding the shares in NSE for more than a decade, since the year 2009, and even as on date, is still holding 3.5% shares in NSE. Thus, holding period of shares by the assessee demonstrates the status of the assessee as a genuine entity carrying on the business in holding investment. It is now fairly well settled that TRC issued by an authority in the other tax jurisdiction is the most credible evidence to prove the residential status of an entity and the TRC cannot be doubted. In fact, the CBDT, specifically in the context of India - Mauritius treaty, has issued Circular No. 682, dated 30th March, 1994 and 789, dated 14th April, 2000 clarifying that TRC issued by Mauritius Tax Authorities proves the residential status of a resident of Mauritius and no other evidence is required. In case of *Azadi Bachao Andolan (supra)*, the Hon'ble Supreme Court has not only upheld the validity of the aforesaid CBDT Circulars, but has also held that "liable to taxation" as used in Article 4 of India-Mauritius DTAA does not mean that merely because tax exemption under certain specified head of income including capital gain from sale of shares has been granted under the domestic tax laws of Mauritius, it can lead to the conclusion that the entities availing such exemption are not liable to taxation. The Hon'ble Supreme Court categorically rejected Revenue's contention that avoidance of double taxation can arise only when tax is actually paid in one of the contracting States. Hon'ble Court held that 'liable to taxation' and 'actual payment of tax' are two different aspects. The Hon'ble Supreme Court has further observed that for economic development, initially, many developing countries allowed some amount of treaty shopping to attract FDI.

20. In case of *Black Stone Capital Partners (Singapore) VI FDI Three Pte. Ltd. (supra)*, the Hon'ble Jurisdictional High Court has again reiterated the legal position that the departmental authorities cannot question the validity of TRC, which proves the residential status of the entity. Thus, applying the ratio laid down in these decisions, it has to be held that once the assessee holds a valid TRC, it proves the residential status of the assessee as resident of Mauritius, hence, it will be eligible to treaty benefits. The various allegations of the Assessing Officer regarding residential status of the assessee, lack of commercial substance etc. are in the nature of vague allegations without backed by substantive evidence, hence, do not deserve consideration. Unfortunately, learned DRP has merely endorsed the view expressed by the Assessing Officer without properly analyzing the facts and evidences brought on record."

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The coordinate Bench deprecated the approach of Revenue in raising doubt over the investigations carried out by various agencies of the Government before granting the approval and allowed the benefit of DTAA to the assessee therein.

16. Thus, in light of facts of the case and documents on records, we find merit in submissions of the assessee and hold that the assessee is entitled to India Cyprus DTAA. The contentions of the Revenue of treaty abuse by the assessee are fallacious. Hence, ground no. 5 and 6 are allowed.

17. The Id. Counsel for the assessee has made statement at Bar that the jurisdictional issues raised in ground no. 1 to 4 of appeal are not pressed. In light of statement made by Id. Counsel, ground no. 1 to 4 of appeal are dismissed as not pressed.

18. In ground no. 9 of appeal, the assessee has assailed initiation of penalty proceeding u/s. 270A of the Act. Challenge to penalty proceeding at this stage is premature. Hence, ground no. 9 of appeal is dismissed.

19. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Wednesday the 07<sup>th</sup> day of May, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 07/05/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

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**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI