

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.:- 6310/Del /2014
Assessment Year: 2010-11

Sterling Agro Industries Ltd. 11 th Floor, Aggarwal Cyber Plaza- II Netaji Subhash Place, Pitampura, New Delhi – 110 034 PAN AAACS2278R	Vs.	Addl. CIT Range-9, New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Kaushlendra Tiwari, Sr. DR
Date of Hearing	24/10/2017
Date of pronouncement	24/10/2017

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against the impugned order dated 03.09.2014, passed by Ld. CIT (Appeals) XII, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2010-11. In the grounds of appeal assessee has raised following grounds:-

1. *That levy of tax on dividend from equity shares and mutual funds which are exempt u/s 10 (34) and 10(35) of the Income Tax Act, 1961 is against the law.*
2. *That on the facts and circumstances of the case, the Ld. Assessing Officer has grossly erred in assessing correctly the tax liability of the assessee in accordance with law by not allowing exemption on an exempt item i.e. dividend received during the year but inadvertently included in its taxable income by the assessee company.*
3. *That Ld. CIT (A) has erred in law by rejecting the rightful and genuine claim of the assessee by not allowing rectifying the assessment and allowing exemption on the whole of the dividend income, which lapse was duly brought to the notice of the Ld. A.O. during the course of assessment proceedings u/s 143(2).”*

2. The brief facts qua the issue involved that assessee in the return of income has claimed dividend income of Rs. 88,77,160/- as exempt. However during the course of assessment proceedings, the assessee vide letter dated 14th February, 2013 made additional claim of further exemption of Rs. 47,82,584/- on the ground that it was also dividend income earned during the year which is exempt u/s 10(34) and 10(35) and the same could not be properly computed at the time of filing of revised return. A.O. disallowed the additional claim made by the assessee on the ground that same should have been made by way of revised return and applying the ratio of Hon'ble Supreme Court in the case of **Goetze India Ltd. vs. CIT 284 ITR 323 (SC)** disallowed the assessee's claim.

3. Ld. CIT (A) too following the same judgment of Hon'ble Supreme Court confirmed the action of the A.O.

4. None appeared on behalf of the assessee despite service of notice. Accordingly, we are proceeding to decide the matter on merits after hearing the Ld. DR.

5. The sole dispute before us is that, whether additional claim made by the assessee for exemption of dividend income of Rs. 47,82,584/- can be entertained or not as assessee has not made this claim by way of revised return. From the perusal of the impugned order it is seen that there is no dispute that total exempt income earned by the assessee is Rs. 1,36,59,745/- in the form of dividend, out of which sum of Rs. 47,82,584/- was claimed by way of letter filed before the A.O. on 14th February, 2013. The AO as well as Ld. CIT (A) have refused to entertain the claim despite the fact that such an income is not taxable after following the ratio laid down in the judgment of Hon'ble Supreme Court in the case of Goetze India Ltd. vs. CIT (supra). However the Hon'ble Supreme Court has held that such claim can be allowed by the appellate authority including the Tribunal and it does not impinge upon the powers of the appellate authorities to entertain for the first time a point of law provided the facts are on the record. Thus, the Ld. CIT (A) should have examine the claim of assessee and allow the same in accordance with the law.

Since there is no dispute that dividend income to the extent of Rs. 47,82,584/- was left to be claimed in the return of income, therefore, the same can be allowed by the appellate authorities including this Tribunal. Accordingly, we direct the A.O. to allow the claim of the assessee and grant exemption of dividend income u/s 10(34) / 10(35).

6. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 25th October, 2017.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 31 /10/2017

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi