

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

माननीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.5564/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Liston Investment Ltd. C-44, 4 th Floor, Gautam Nagar L.T. Road, Borivali (E) Mumbai - 400 092.	बनाम/ Vs.	ITO-12(3)(3) Room No.224, 2 nd Floor Aaykar Bhavan, MK Road Mumbai – 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCL-2378-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Suchek Anchaliya-Ld.AR
Revenue by	:	Ms. Smita Verma – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	24/03/2021
घोषणा की तारीख / Date of Pronouncement	:	05/04/2021

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-20, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No.CIT(A)-20/IT-10259/2018-19 dated 28/06/2019 on certain grounds. However, the grounds urged before us is ground nos. 3 & 4 which read as under: -

3. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in not considering the fact that the order passed by the Learned Assessing Officer was by treating the appellant as a Resident company whereas the appellant is a Non Resident company.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by Ld. A.O. of Rs. 8,09,170/-, being the amount of dividend received from investment made in an Indian Company, registered on the Stock Exchange, which is exempt u/s 10(34) r.w.s 115(O) of the Act, by treating the same as income from unexplained source.

2. We have carefully heard the rival submissions and perused relevant material available on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The material facts are that an assessment was framed against the assessee for the year u/s 144 r.w.s. 147 on 07/12/2018. The reassessment proceedings stem from the fact that the assessee did not file return of income for the year under consideration. However, upon perusal of TDS-Form 15CA filed by the assessee, it transpired that it made certain remittances of Rs.8.09 Lacs to non-resident. The remittance was stated to be in the nature of dividend. On the basis of the same, it was concluded by Ld. AO that the assessee had earned profits during the year and paid dividend to non-resident since the dividend has to be paid out of profits earned during the year. Since the assessee failed to make any submissions, the aforesaid amount of Rs.8.09 Lacs was determined as its total income.

4. Before Ld. CIT(A), the assessee submitted that it was a Mauritius based non-resident foreign company and it received dividend from an Indian Company which was exempt u/s 10(34) r.w.s. 115-O of the Act. Therefore, the assessee was not liable to pay tax on such income. However, the said argument could not find favor with Ld. CIT(A) who chose to confirm the action of Ld. AO. Aggrieved, the assessee is in further appeal before us.

5. Upon perusal of documents as placed before us, we find that the assessee, in fact, is a private company incorporated in Mauritius as evident from certificate of incorporation dated 12/07/1996. It has received dividend of 20% on equity shares for the year 2009-10 for an amount of Rs.8,07,800/- from an Indian listed entity namely *Asian Star Company Limited* which is evident from payer's letter dated 19/10/2010 written to the assessee and also from payer's letter dated 08/10/2010 written to assessee's bank. The said amount has been debited from payer's bank account on 12/10/2010. Thereafter, the assessee has remitted US Dollars 18225 (equivalent to Indian Rs.8,09,170/-) on 08/11/2010 from its bank account maintained with Indusind Bank Ltd, Mumbai Branch to its own account in Mauritius. For this remittance, the assessee has filed Form No.15CA on 03/11/2010 as required to effectuate the said remittance. The same is also evident from Form No.15CB issued by a Chartered Accountant as per the requirements of Rule 37BB. Thus, we find that the receipts by assessee were in the nature of dividend from an Indian entity which was subsequently transferred by assessee from its one bank account to another bank account. Since the dividend income would be exempt in the hands of the assessee in terms of Sec. 10(34) r.w.s. 115-O, there would not be any requirement to file Income Tax Return for the assessee. Hence, considering the factual matrix, the income of Rs.8.09 Lacs as determined by Ld. AO is not sustainable. We order so.

6. The appeal stands partly allowed in terms of our above order.

Order pronounced on 5th April, 2021.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/04/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**