

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 415/Kol/2022
Assessment Year: 2011-12

ABC India Ltd. (PAN: AACCA 2035 J)	Vs.	DCIT, Circle-11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	17.10.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri S.K. Pransukhka, FCA
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 29.06.2022 for the AY 2011-12.

2. The only issue raised by the assessee is against the confirmation of incorrect levy of Dividend Distribution Tax (DDT) amounting to Rs. 4,59,270/- in AY 2010-11 instead of in AY 2011-12 by Ld. CIT(A) which was levied by the CPC/AO in the intimation dated 27.02.2013 passed u/s 143(1) of the Act and thereafter the

rectification application moved by the assessee was also rejected vide order dated 20.06.2017.

3. Facts in brief are that the assessee company declared dividend income in the month September, 2010. The distribution dividend tax of Rs. 4,59,270/- was paid on 17.09.2010 by wrongly mentioning AY as 2010-11 instead of AY 2011-12. While filing the return of income, the assessee again committed mistake in filling up the AY 2010-11 nonetheless the assessee has not declared any dividend in September, 2009 relevant to AY 2010-11. So there is no dispute that the company has not declared any dividend in September, 2009 but dispute arose from filling up incorrect information/details inadvertently. The assessee noticed the said mistake while filing the return of income for AY 2011-12 and the information/details were correctly filled in AY 2011-12. However the challans mentions AY 2010-11. The assessee filed return of income on 29.09.2022 for A.Y. 2011-12 which were processed u/s 143(1) vide intimation dated 27.02.2013 thereby a demand of Rs. 5,02,180/- has been raised. Thereafter the assessee moved a rectification application requesting the AO to rectify the said factual mistake by taking the demand into plus minus. However the same was rejected vide order dated 20.06.2017 by the AO.

4. The assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) again dismissed the appeal by observing and holding as under:

“5. I have considered the submission made before me by the appellant. The first ground of appeal relates to the non-granting of credit for Dividend Distribution Tax (DDT) of Rs. 4,59,270/- in respect of dividend of Rs. 27,04,181/- declared for year ending 31.03.2010. In this respect the assessee has stated that though the said dividend was declared on 31.03.2010 (AY 2010-11) yet as the same was approved in the Annual General Meeting held on 04.09.2010, so should be considered for the next assessment years, i.e AY 2011-12.

5.1. However on going through the Audit Accounts including Director's Report, it is seen that the proposed dividend has been declared for the year ending 31.03.2010 and the DDT deducted on the same has also been shown as a provision (Rs. 4,59,100/-) in the Profit & Loss account for the year ended 2010. It is thus clear that the appellant company had intended to show dividend for AY 2010-11 only. It is admitted that the same is also included under Scheme DDT of ITR for 2010-11. Though the appellant now takes the plea that this was due to oversight, yet it is clear from the Audited accounts that the Dividend as well as DDT were intended to be declared for AY 2010-11 only.

5.2. It is further contended that the tax of Rs. 4,59,270/- which was paid, in the challan also the AY was written as 2010-11 by mistake. It seems unlikely that both in the schedule as well as in the challan, there would be an un-intended mistakes of the AY and in both the AY would be written as 2010-11 instead of 2011-12, as is now being claimed. On going through the accounts, it is thus clear that the dividend was declared by the appellant company for Y.E 2010 only and the tax was to be paid for the same year. There is therefore no mistake in the processing done by CPC u/s 143(3) and the same is upheld. The appellant gets no relief on this account.”

5. After hearing the rival contentions and perusing the material on record, we find that undisputedly the dividend was declared in September, 2010 meaning thereby that the dividend was declared for AY 2011-12 but inadvertently the assessee filled all the details as to dividend distribution in the return of income under scheme DDT in AY 2010-11 and also mentioned the AY 2010-11 while making the tax payments of Rs. 4,59,270/- in the challan. In other words, in the ITR as well as in the challan, the said dividend was stated to be declared for AY 2010-11 and accordingly DDT was deposited however while filing the return of income of AY 2011-12 the mistake was came to be revealed. Immediately the assessee applied for rectification of the intimation issued u/s 143(1)(a) of the Act before the AO/CPC. However the same was rejected on the ground that there is no mistake in the order passed u/s 143(1)(a) as the processing was done on the basis of information furnished by the assessee. Similarly the Ld. CIT(A) refused to accept the contentions of the assessee that the mistake in ITR as well as in challan appeared to be due to inadvertence and therefore rejected the appeal of the assessee. Having considered the facts on record qua the dividend declared in September, 2010 which undisputedly means that it was declared for AY 2011-12 and tax was also to be deposited of Rs. 4,59,270/- for AY 2011-12 but wrongly and inadvertently assessment year was mentioned in challan as AY 2010-11. In our view this is a factual mistake committed by the counsel of the assessee and is apparent from the records before us. Had the dividend been submitted in 2009, the particulars filled up by the assessee in AY 2010-11 would have been correct but in any case the assessee has not declared any dividend in AY 2010-11 but in AY 2011-12. This is a clerical and inadvertent mistake on the part of the assessee and the assessee should not suffer or penalized for the same. Therefore in the interest of

natural justice and fair play, we set aside the order of Ld. CIT(A) and direct the AO to treat the same as dividend declared for AY 2011-2 and treat the payment of DDT of Rs. 4,59,270/- as paid in respect of AY 2011-12.

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

Order is pronounced in the open court on 16th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 16th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ABC India Ltd., 40/8, Ballygunge Circular Road, Kolkata-700019
2. Respondent – DCIT, Circle-11(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata