

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1222/Mum/2022
(Assessment Year :2013-14)**

M/s. Tata Communications Limited Videsh Sanchar Bhavan M.G. Road, Fort Mumbai – 400 001	Vs.	Deputy Commissioner of Income Tax-1(3)(2) Mumbai Aayakar Bhavan Maharshi Karve Road Mumbai – 400 020
PAN/GIR No.AAACV2808C		
(Appellant)	..	(Respondent)

Assessee by	Shri Nitesh Joshi
Revenue by	Shri Samuel Pitta
Date of Hearing	12/01/2023
Date of Pronouncement	31/01/2023

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No. 1222/Mum/2022 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC) in appeal No.CIT(A)-3, Mumbai/10177/2019-20 dated 31/03/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.154 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/10/2017 by the Id. ACIT-1(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided is with regard to refund of excess dividend distribution tax of Rs.81,11,250/-.

3. We have heard rival submissions and perused the materials available on record. The assessee company is engaged in the business of providing international tele-communication services, national long distance services within India, internet related services, INmarsat and other value added services. The original return of income was filed by the assessee on 22/11/2013 declaring total income of Rs.484,62,00,210/- which was later revised on 26/03/2015 declaring total income of Rs. 44,57,91,06,260/-. The final assessment order was passed by the Id. AO u/s.143(3) r.w.s. 144(C)(13) of the Act on 23/10/2017 determining total income of Rs.803,33,69,470/- under normal provisions of the Act which was much more than the book profits computed u/s.115JB of the Act.

3.1. The assessee company in its income tax return filed for A.Y.2013-14 had duly stated that it had paid dividend distribution tax of Rs.9,24,68,250/- on 09/08/2012. It is not in dispute that assessee has received dividend from its wholly owned Indian subsidiary of Rs. 5 Crores which was claimed as exempt u/s.10(35) of the Act. This interim dividend of Rs.5 Crores was stated to be received from the subsidiary company on 30/10/2012. The assessee company had declared dividend of Rs.57 Crores in its annual general meeting on 27/07/2012. The dividend distribution tax calculated @16.2225% on Rs.57 Crores works out to Rs.9,24,68,250/-. This dividend distribution tax of Rs.9,24,68,250/- was duly paid to the account of Central Government by the assessee company on 09/08/2012. Since during the same F.Y.2012-13 relevant to A.Y.2013-14, the assessee had received interim dividend of Rs. 5 Crores from its wholly owned subsidiary company on 30/10/2012, this sum of Rs.5 Crores was eligible to be reduced from the dividend declared by the assessee of

Rs.57 Crores in terms of Section 115O(1A)(i)(a) of the Act. It is not in dispute that the wholly owned subsidiary company i.e. Tata Communications Transformation Services Ltd. had duly remitted the dividend distribution tax of Rs.81,11,250/- (i.e. Rs.5 Crores x 16.2225%) on 02/11/2012. Hence, as per the provisions of 115O(1A) of the Act, the assessee is entitled to pay dividend distribution tax only on Rs.52 Crores (Rs.57 Crores – Rs.5 Crores) @ 16.2225% which work out to Rs.8,43,57,000/-, but the assessee has paid dividend distribution tax of Rs.9,24,68,250/- on 09/08/2012 itself. On the date of payment of dividend distribution tax on 09/08/2012 by the assessee company, it is a fact that assessee company had not received the interim dividend of Rs.5 Crores from its wholly owned subsidiary company. At the cost of repetition, the dividend of Rs.5 Crores from wholly owned subsidiary company was received by the assessee company only on 30/10/2012. Hence, assessee company could not have pre-empted the receipt of interim dividend of Rs.5 Crores from subsidiary company while making remittance of its dividend distribution tax on 09/08/2012. Accordingly, as per the provisions of Section 115O of the Act, the assessee had sought to seek refund of excess payment of dividend distribution tax of Rs.81,11,250/- in the income tax return itself filed by the assessee and this fact was also brought to the attention of the Id. AO during the course of assessment proceedings. The fact of assessee claiming refund of excess dividend distribution tax in the income tax return and the fact of submissions made by the assessee before the Id. AO during the course of assessment proceedings had been completely ignored by the Id.AO while framing the draft assessment order and also while framing the final assessment order. There was absolutely no discussions in the said orders by the Id. AO on the impugned issue of refund of excess dividend distribution tax. For the sake of convenience, the provisions of Section 115O(1) and 115O(1A)(i)(a) are reproduced hereunder:-

115-O. (1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003 [but on or before the 31st day of March, 2020], whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of fifteen per cent:

Provided that in respect of dividend referred to in sub-clause (e) of clause (22) of section 2, this sub-section shall have effect as if for the words "fifteen per cent", the words "thirty per cent" had been substituted.

(1A) The amount referred to in sub-section (1) shall be reduced by,—

(i) the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,—

(a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or

(b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend:

Provided that the same amount of dividend shall not be taken into account for reduction more than once;

.....

3.2. From the bare perusal of the aforesaid provisions, it is very clear that assessee is entitled to pay dividend distribution tax on the dividends declared by it after reducing the dividends received from its subsidiary company during the financial year, provided such subsidiary company had duly remitted the dividend distribution tax on the dividends declared by it. In the instant case, it is not in dispute that the wholly owned subsidiary company had duly remitted the dividend distribution tax of Rs.81,11,250/- on 02/11/2012 on the interim dividend declared by it to the assessee company in the sum of Rs.5 Crores. Hence, the action of the lower authorities in the instant case is clearly contrary to the provisions of Section 115O(1A) of the Act. Accordingly, we hold that assessee is entitled as per the Act to seek refund of Rs.81,11,250/- in respect of

excess payment of dividend distribution tax. Accordingly, the ground No.1 raised by the assessee is allowed.

4. The ground No.2 raised by the assessee is seeking u/s.244A of the Act.

4.1. We have heard rival submissions and perused the materials available on record. This is purely a computational issue. In view of our decision rendered in ground No.1 hereinabove wherein we have directed the Id. AO to grant refund of excess payment of dividend distribution tax of Rs.81,11,250/-, the same would partake the character of "any amount due" u/s.244A of the Act, hence assessee would be entitled for interest on said amount also u/s.244A of the Act.

4.2. There have been some section 154 order passed by the Id. AO on 01/07/2019 wherein the interest u/s.244A of the Act has been computed by the Id. AO on Rs.29,36,33,986/- being the refund determined as against the correct figure of Rs.33,60,70,137/- as per the computation sheet enclosed in the section 154 order dated 01/07/2019. As stated earlier, this being a computational issue, we direct the Id. AO to relook the workings and grant interest u/s. 244A of the Act strictly in accordance with law. Accordingly, the ground No.2 raised by the assessee is allowed for statistical purposes.

5. The ground No.3 raised by the assessee is challenging the interest levied u/s.234D of the Act.

5.1. We have heard rival submissions and perused the materials available on record. In response to the return filed by the assessee, the return was processed u/s.143(1) of the Act determining refund due to the assessee including interest u/s 244A of the Act. Later, the said refund was

converted into demand in the scrutiny assessment framed u/s.143(3) of the Act wherein interest u/s.234D of the Act was charged by the Id. AO on the refund including interest u/s.244A of the Act determined u/s. 143(1) of the Act, instead of calculating interest u/s.234D of the Act only on the refund of tax portion determined u/s.143(1) of the Act. This would be correct understanding of the provisions of Section 234D r.w.s. 244A of the Act. We direct the Id. AO to charge interest u/s.234D of the Act in view of the aforesaid provisions and recompute the same in accordance with law.

6. The ground No.4 raised by the assessee is challenging the interest u/s.220(2) of the Act.

6.1. We have heard rival submissions and perused the materials available on record. This is purely consequential issue and a computational issue. Hence we direct the Id. AO to recompute the same, if any, chargeable, in accordance with law. The assessee is also directed to furnish the workings in this regard to the Id. AO. Accordingly, the ground No.4 raised by the assessee is allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 31/01/2023 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 31/01/2023
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai