

**IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA No.6375/Mum/2013

(A.Y.2007-08)

ITA No.2968/Mum/2015

(A.Y.2008-09)

Ambuja Cement Ltd (Formerly known as Gurjrat Ambuja Cements Ltd.) Elegant Business Part, MIDC Cross Road B, Andheri (E) Mumbai-400059	Vs.	ACIT-LTU 29 th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai- 400005
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAACG0569P		
Appellant	..	Respondent

Appellant by :	Shri Chaitanya D Joshi
Respondent by :	Shri Manoj Mishra

Date of Hearing	30.05.2023
Date of Pronouncement	31.05.2023

आदेश / O R D E R

PER BENCH :

These two appeals filed by the assessee were adjudicated vide combined order of the vide ITAT No. 2968/Mum/2015 and 1665/Mum/2019 on 07.11.2022.

2. Thereafter the assessee filed miscellaneous application vide MA no. 381/Mum/2022 and MA 382/Mum/2022 and submitted that additional grounds raised vide separate application dated 05.01.2018 was remained to the adjudicated by the Tribunal in the above referred order dated 07.11.2022.

3. The ITAT vide order dated 28.02.2023 has allowed the miscellaneous application filed by the assessee and recalled the order dated 07.11.2022 to the limited extent of adjudication of additional grounds raised by the assessee vide application dated 05.01.2018.

4. The additional grounds of appeal filed by the assessee are adjudicated as follow. The assessee has raised the following additional grounds of appeal.

“The following ground is independent of, and without prejudice to previous grounds,

1. On the facts and circumstances of the case, and in law, the Appellant ought to be granted the benefit of Article 10 of the India Mauritius Double Tax Avoidance Agreement, that the dividend declared by the appellant to Holderind Investment Ltd., Manutius is liable to dividend distribution tax at the rate of 5 percent.

The appellant craves leave to add, amend, alter or withdraw all or any of the grounds of appeal at or before the time of hearing.

5. The additional grounds of appeal of the assessee is pertained to the applicability of dividend distribution tax at the rate of 5% to the dividend declared by the assessee to Holderind Investment Ltd., Mauritius and the assessee sought the benefit of article 10 of the India-Mauritius Double Tax Avoidance Agreement. At the outset Ld Counsel agreed that identical issue and similar facts has been decided by the Special Bench of ITAT Mumbai in the case of DCIT v/s Total Oil India Pvt. Ltd. vide ITA No. 6997/Mum/2019 dated 20.04.2023 wherein held that additional grounds income tax payable by the domestic company shall be at the rate of mentioned in section 115-O of the Act.

5. With the assistance of Ld representative, we have been gone through the decision of ITAT special bench Mumbai as referred supra in the case of DCIT v/s Total India Pvt. Ltd. ITA no. 6997/Mum/2019 wherein it is held that the dividend declared, distributed or paid by a domestic company to non resident shareholder (s) attract additional income tax (tax on distributed profits) referred to in section 115-O of the Act, such additional income tax payable by the domestic company

shall be at the rate of mentioned in section 115-O of the Act and not at the rate of tax applicable to the non resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income. Following the decision of the Special Bench as (supra) the dividend distribution tax is not on the shareholder but a tax on the domestic company. It is a tax on the company distributing the dividend and not tax paid on behalf of the shareholder. Therefore, following the decision of Special Bench as (supra) both the additional grounds of appeal are dismissed.

Order pronounced in the open court on 31.05.2023

Sd/-

(Amit Shukla)
Judicial Member

Place: Mumbai

Date .06.2023

Aniket Singh Rajput: Steno

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			