

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

BEFORE,

**SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.5671/Del/2019
(ASSESSMENT YEAR 2015-16)**

ACIT Circle 8(1) New Delhi	Vs.	M/s Earth stone Holding (Two) Pvt. Ltd. 2 nd Floor, HT House 18-20, Kasturba Gandhi Marg New Delhi-110 001 PAN-AACCE 1490K
(Appellant)		(Respondent)

Appellant by	Mr. Vivek Kumar Upadhyay, Sr. DR
Respondent by	Mr. Rohit Jain and Mr. Saksham Singhal, Advocates

Date of Hearing	07/08/2023
Date of Pronouncement	05/10/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-3, New Delhi ["Ld. CIT(A)", for short], dated 10/04/2019 for Assessment Year 2015-16.

2. Grounds taken in this appeal are as under:

"1. Ld. CIT(A) erred on the facts and circumstances of the case and in law in deleting the addition of Rs.8,12,22,273/- made by A.O. on account of excess dividend received by assessee.

2. *The Ld. CIT(A) has erred in not appreciating the facts that assessee has evaded the taxes by resorting to a colorable device as is evident from the facts of the case and the transaction carried by the assessee.*

3. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”*

3. Brief facts of the case are that, the assessee shown exempt income of Rs. 33,93,22,840/- which included a sum of Rs. 27,72,22,273/- on account of dividend received from the company M/s Jubilant Enpro Pvt. Ltd. (JEPL). The AO called for the details of this dividend received from JEPL. It was submitted that the Assessee was holding 2.40 crores number of 14% Cumulative Non-Convertible Redeemable Preference Shares (CNCRPS) of face value of Rs. 10 each and during the year, the assessee had redeemed these shares. These CNCRPS were purchased by the assessee on 16.02.2009 for a sum of Rs. 24 crores. On 12.12.2014, these shares were redeemed and the Assessee received a sum of Rs. 24 crores as face value and total dividend of Rs. 27,72,22,273/-. The AO observed that the assessee was due to receive dividend of Rs. 19.60 crores @ 14% for the period from the date of purchase to the date of redemption and the assessee had received excess dividend of Rs. 8,12,22,273/-. The AO asked the assessee to reconcile this difference and the reason for receiving excess dividend. It was submitted by the assessee that at the time of allotment of the preference shares on 16.02.2009, i.e., financial year 2008-09, it was agreed that CNCRPS shall carry dividend @14% p.a. and the shares were redeemable on or before 20 years from the date of allotment. Subsequently, in

view of early redemption of shares, within 5 ½ years, JEPL, vide letter dated 02.04.14 proposed to modify the terms so as to compound the dividend annually @14% p.a. It is submitted that the company JEPL had made the offer to compound the dividend annually @ 14% so as to seek the consent of the assessee for redemption of the CNCRPS held by the Assessee and these terms were modified in accordance with the provisions of the Companies Act. The AO held that there is a clear violation of the terms specified in the MOA of JEPL and therefore, treated the excess dividend of Rs. 8,12,22,273/- as income of the Assessee and has made the addition.

4. Aggrieved by the assessment order dated 27/12/2017, the assessee preferred an appeal before the CIT(A), the Ld. CIT(A) vide order dated 19/01/2018 deleted the addition of Rs. 8,12,22,273/- made by the A.O. on account of excess dividends received by the assessee. As against the order of the CIT(A), the Department of Revenue filed the present appeal on the grounds mentioned above.

5. The Ld. Departmental Representative submitted that the CIT(A) erred in deleting the addition of Rs. 8,12,22,273/- made by the A.O. on account of excess dividend received by the assessee by not appreciating the fact that the assessee had evaded the taxes by restoring to colorful device which is evident from the facts of the case and the transaction carried by the assessee. The Ld. Departmental Representative relying on the Assessment Order sought for reversal of the finding and the conclusion of the CIT(A).

6. Per contra, the Assessee's Representative relying on the findings and conclusion of the CIT(A), submitted that the Grounds of appeal of the Revenue is devoid of merit which requires to be dismissed.

7. We have heard both the parties and perused the material available on record. The Ld. CIT(A) while deleting the addition made by the A.O. held as under:-

“5.3 I have considered the facts of the case and the submission made by the AR. It has been contended that the appellant had received the dividend of Rs. 27,72,22,273/- from JEPL on redemption of 14% Cumulative Non-convertible Redeemable Preference Shares (CNCRPS) and the same was claimed exempt u/s 10(34) of the Act. It is further contended that there was no violation of the terms and conditions as defined and agreed upon at the time of offer of these shares. It is observed from the share certificates that the terms & conditions specified were as under:

(vi) CNRPS shall carry dividend @14% p.a.;

vii) The said shares shall have preferential right to dividend and in case of winding up (of the company, preferential right to repayment of capital;

(viii) The holder of the said shares shall have a right to attend general meetings of the company and vote on resolution directly affecting their interest;

(ix) All or any of rights and privileges for the time being attached to the said clauses of shares may, subject to the provisions of section 106 and 107 of the Companies Act, 1956 and whether the company is being wound up, be varied, modified, abrogated or dealt with either with consent in writing of the holders of not less than three-fourth of the issue of that

class or by a special resolution passed at a separate general meeting of the holders of shares of that class.

(x) The shares were redeemable on/ before 20 years from the date of allotment.

It is also observed that the company JEPL obtained the consent of majority of the share holders and altered the terms & conditions as per which the dividend @ 14% was allowed to be compounded annually from the date of allotment and it was done in accordance with section 106 of the Companies Act, 1956 and the resolution was passed on 23.04.2014. Accordingly, the appellant was paid dividend @ 14% compounded annually from the date of allotment. The company JEPL paid dividend distribution tax (DDT) u/s 115-0 of the Act. It is further observed that the AO has treated the additional dividend received by the appellant as taxable only on the ground that there is change in the terms & conditions with respect to the issue of dividend. However, it is to be appreciated that the original terms & conditions permitted amendment with the consent of at least 75% of the holders of these shares and the terms were amended by following the due process. Even otherwise, it is observed that as per the provisions of section 10(34) of the Act, dividends which are referred in section 115-0 of the Act, are exempt and as per section 115-0, domestic companies are liable to pay dividend distribution tax on the amounts declared as dividends. Accordingly, any dividend declared/paid by a domestic company on which DDT has been paid, is exempt u/s 10(34) of the Act. In this case, the company paying dividend to the appellant has duly paid DDT and therefore, the appellant is entitled to treat the dividend as exempt u/s 10(34) of the Act. In view of these facts, I am of the opinion that the objection of the AO regarding the modification in

terms & condition regarding the issue of dividend is not valid. Even if, there is some violation at the end of JEPL which has paid dividend to the appellant, the dividend cannot be taxed in the hands of the appellant as dividend distribution tax has been paid on this amount and there cannot be double taxation of the same amount. Accordingly, it is held that the entire dividend received by the appellant is exempt u/s 10(34) of the Act and therefore, the addition made by the AO is deleted and the grounds of appeal are allowed.”

8. It is found that the assessee received dividend of Rs. 27,72,22,273/- from M/s Jubilant Enpro Pvt. Ltd. (JEPL) on redemption of 14% Cumulative Non-convertible Redeemable Preference Shares (CNCROS) and the same was claimed exempt u/s 10(34) of the Act. It is the case of the assessee that there was no violation of terms and conditions as defined and agreed upon at the time of offer of the shares. The terms and conditions of the share certificate are as under:-

“(vi) CNRPS shall carry dividend @14% p.a.;

vii) The said shares shall have preferential right to dividend and in case of winding up (of the company, preferential right to repayment of capital;

(viii) The holder of the said shares shall have a right to attend general meetings of the company and vote on resolution directly affecting their interest;

(ix) All or any of rights and privileges for the time being attached to the said clauses of shares may, subject to the provisions of section

106 and 107 of the Companies Act, 1956 and whether the company is being wound up, be varied, modified, abrogated or dealt with either with consent in writing of the holders of not less than three-fourth of the issue of that class or by a special resolution passed at a separate general meeting of the holders of shares of that class.

(x) The shares were redeemable on/ before 20 years from the date of allotment.”

9. It is observed that the Company JEPL obtained the consent of majority of the share holders and altered the terms and conditions as per which the dividend at 14% was allowed to be compounded annually from the date of allotment. The said alteration of the terms and conditions was done in accordance with Section 106 of Companies Act and also a Resolution was passed on 23/04/2014 to that effect, accordingly, the assessee was paid dividend at 14% compounded annually from the date of allotment. The Company JEPL paid dividend distribution taxes (DDT) u/s 115-O of the Act, the A.O. treated the additional dividend received by the assessee as taxable on the ground that there is a change in the terms and conditions with respect to the issue of dividend. It is worth to observe that the original terms and conditions are permitted to amend with the consent of at least 75% of the shares holders of these shares, which has been complied in the present case. As per the provision of Section 10(34) of the Act, the dividends which are referred in Section 115-O of the Act, are exempt and as per Section 115-O,

domestic companies are liable to pay Dividend Distribution Tax on the amounts declared as dividends, accordingly, any dividend declared/paid by a domestic Company on which DDT has been paid, is exempt u/s 10(34) of the Act. In the present case, the Company paying dividends to the assessee has duly paid DDT and, therefore, the assessee is entitled to treat the dividend as exempt u/s 10(34) of the Act. Thus, in our considered opinion, we find no error or infirmity in the order of the CIT(A) in deleting the addition and find no merit in the Grounds of Appeal of the Revenue. Accordingly, we dismiss the Appeal filed by the Revenue.

10. In the result, the Appeal filed by the Revenue is dismissed.

Order pronounced in open Court on 05th October, 2023

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 05/10/2023

Pk/R.N, Sr ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

