

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.2581/Bang/2019
Assessment Year : 2016-17

M/s ITC Essentra Ltd., Survey No.139/140, Veerapura Village, Kasaba Hobli, Doddaballapur, Bengaluru. PAN : AAACI 5640 P	Vs.	1. The Income Tax Officer, Ward-3(1)(1), Bengaluru. 2. National Faceless Appeal Centre, Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri K.R Vasudevan, Advocate
Revenue by	:	Shri Parithivel, JCIT (DR)

Date of hearing	:	05.10.2023
Date of Pronouncement	:	09.10.2023

ORDER

Per Beena Pillai, Judicial Member :-

The present appeal is filed by the assessee against the order dated 24/10/2019 passed by the Ld.CIT(A)-3 for assessment year 2016-17 on the following grounds of appeal:-

“Non-consideration of additional claim raised during the course of assessment proceedings

Powers to admit a fresh claim other than by way of a revised return of income (ROI)

1.1 The learned CIT(A) has erred in concluding that since there is no express provision in the Act which empowers the assessing officer ('AO') to admit the claim made by an assessee during the course of assessment proceedings, i.e., otherwise than by filing a revised ROI, the powers of the CIT(A) to admit such claim also gets restricted accordingly.

1.2 The learned CIT(A) has erred in not appreciating the judicial precedents placed before him wherein, various courts have held that both the AO as well as the appellate authority have powers to admit a claim made by an assessee, otherwise than by filing a revised ROI.

Non-admission of fresh claim on account of limited scrutiny

L3. The learned CIT(A) has erred in holding that since the fresh claim placed by the Appellant did not fall within the scope of the issues selected for limited scrutiny, the learned AO could not have admitted such fresh claim.

1.4 The learned CIT(A) has erred in concluding that the Appellant's right to place fresh claim before the AO otherwise than by filing a revised ROI is determined based on the nature of scrutiny i.e., limited or complete.

1.5 The learned CIT(A) has erred in not appreciating the fact that while concluding the assessment, the learned AO ought to have considered all the facts placed on record before him.

Impossibility of filing a revised ROI

1.6 The learned CIT(A) has erred in holding that even if the window for filing the revised ROI was open, the Appellant could not have filed a revised ROI since revision is permissible only in case of omission/wrong statement and not in case of difference in opinion on a legal issue, as in the present case.

1.7 The learned CIT(A) has erred in not appreciating the fact that the fresh claim put forth by the Appellant during the course of assessment proceedings was, in fact, an act of omission of not claiming the same in the original ROI.

2. Deduction for education cess and secondary and higher education cess (collectively called as 'education cess') of Rs.18,43,253

2.1 The learned CIT(A) has erred in not adjudicating the ground raised by the Appellant with regards to deduction of education cess by deeming the same to be purely academic in nature.

2.2 *The learned CIT(A) and the learned AO have erred in not granting the deduction towards education cess of Rs. 18,43,253 under section 37 of the Act.*

2.3 *The learned CIT(A) and the learned AO have erred in not appreciating that education cess is:*

** in the nature of 'levy' on tax; and*

** not tax itself that is levied on the profits or gains of any business or profession or assessed at a proportion of, or on the basis of, any such profits or gains, as envisaged under section 40(a)(ii) of the Act.*

2.4 *The learned CIT(A) and the learned AO have erred in not appreciating the change in provisions of the law from the 1922 Act to the 1961 Act, the circulars issued by the Central Board of Direct Taxes and various judicial precedents, which support the claim placed by the Appellant.*

The Appellant craves leave to add, alter, rescind and modify the grounds hereinabove or produce further documents, facts and evidence before or at the time of hearing of this appeal.

For the above and any other grounds, which may be raised at the time of the hearing, it is prayed that necessary relief may be provided.

1.1. The assessee has also raised following additional grounds:

1.2. The Ld.AR submitted that assessee has filed an application seeking admission of additional grounds on 25.01.2021 which are as under:

“Ground 3 - *Erred in not extending the benefit of applicable Double Taxation Avoidance Agreements between India - UK ('DTAA') qua the rate of tax towards payment of dividend to the non-resident shareholder*

3.1 *The learned Assessing Officer ('AO') erred in not extending the benefit of applicable DTAA qua the rate of tax i.e. 10%, on payment of dividend to the shareholder i.e. Essentra Filter Products International Limited.*

3.2 *The learned AO failed to appreciate that the dividend income was that of the nonresident recipient who was governed by the beneficial provisions of the DTAA.*

3.3 The learned AO has also failed to appreciate that in terms of section 90(2) read with section 10(34) of the Income-tax Act, 1961 ('the Act'), the income being taxable in the hands of non-resident could not be subjected to a rate in excess of the rate prescribed under the India-UK DTAA of 10% and hence, erred in subjecting the Appellant to additional income tax in terms of section 115-0 of the Act.

3.4 The learned AO erred in not granting refund of the excess DDT paid by the Appellant, since as per the provisions of Section 237 of the Act read with Article 265 of the Constitution of India, only legitimate tax could have been retained.”

1.3. It has been submitted that no new facts needs to be considered in order to dispose of the additional grounds raised by the assessee. It is submitted that, the additional grounds raised do not require verification of any new facts. The Ld.AR, thus prayed for the admission of additional grounds so raised by assessee.

1.4. On the contrary, the Ld.CIT.DR though opposed admission of the additional ground, could not bring anything on record which would challenge such a right available to assessee under the Act.

We have perused the submissions advanced by both sides in light of records placed before us.

1.5. We note that the additional grounds are directly connected with the main issue of disallowance and no new facts needs to be investigated for adjudicating the same. Considering the submissions and respectfully following the decisions of *Hon'ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported

in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, the additional grounds raised by the assessee stands admitted.

Accordingly, we admit the additional grounds raised by the assessee.

2. The brief facts of the case are as under:

The assessee is a company, incorporated on 4 May 1993 under the Companies Act, 1956 and a joint venture between Goldflake Corporate Limited (a subsidiary of ITC Limited) and Essentra Filter Products International Limited ('EFPIL') (a subsidiary of Essentra PLC, United Kingdom). The assessee is engaged in the business of manufacturing of filter rods used mainly in the production of filter cigarettes. The assessee had filed its return of income on 29/11/2016 declaring total income of Rs. 16,08,82,100/-.

2.1. During the year under consideration, the assessee had paid cess of Rs.18,61,833/- and also had paid dividend distribution tax at Rs.20.36% on the dividends issued to its share holders that included the foreign share holder in UK. In the assessment proceedings, the assessee had raised claim during the assessment proceedings regarding allowability of cess and to consider the rate of DDT on the dividend issued to the UK

share holder as per DTAA instead of section 115O of the Act. The Ld.AO, denied such claims as it did not form part of the returned income. The Ld.AO completed the assessment accepting the return of income filed by the assessee.

3. On appeal before the Ld.CIT(A), the additional claim raised was rejected on similar reasoning that the claim was not made in the return of income and, therefore, could not be entertained.

4. Aggrieved by the order of the ld.CIT(A), the assessee filed appeal before this *Tribunal*.

The preliminary issue, is that the authorities below did not consider fresh claim raised by the assessee, thereby not determined the actual income i.e to be assessed in the hands of the assessee. The assessee also application for admission of additional ground in respect of the issue pertaining to dividend distribution tax vide application dated 25/1/2021. The issue raised therein is that the assessee could not be subjected to dividend distribution tax on higher rate, which is in excess of the rate prescribed under India - UK (DTAA).

5. Before this *Tribunal*, the Ld.AR fairly conceded that both issues raised by the assessee in the grounds of appeal as well as in additional grounds are against

assessee by decisions of *Hon'ble Supreme Court* and decision of *Hon'ble Special Bench of Mumbai* respectively.

6. The Ld.AR submitted that if the issue pertaining to allowability of cess has been considered by *Hon'ble Supreme Court* in the case of *JCIT vs. Chambal Fertilizers Ltd.*, reported in (2022) 145 taxmann.com 420, wherein it is held that; *Explanation 3 to section 40(a)(ii)* inserted by Finance Act, 2022 with effect from 1-4-2005, makes it clear that, any surcharge or cess forms part of 'tax' and same could not be allowed as deduction while computing profits and gains of business of assessee.

7. In respect of the issue of rate applicable on dividend distribution to a non resident, it is submitted that *Hon'ble Mumbai Special Bench* in the case of *DCIT Vs. Total Oil India Pvt Ltd.*, reported in (2023) 149 taxmann.com 332 has held that where the dividend is declared/distributed or paid by a domestic company to non-resident share holder and additional income tax on the distributed profits would be attracted u/s 115O of the Act and such additional Income-tax payable by the domestic company shall be mentioned in sec. 115O of the Act to the non-resident shareholder, who is resident of the dividend distributed.

8. The ld.DR relied on the orders of *Hon'ble Supreme Court* in the case of *Chambal Fertilizers (supra)* and on the decision of *Hon'ble Mumbai Special Bench* in the case of *Total Oil India Pvt. Ltd., (Supra)* that both the issues in the present appeal.

9. We have perused the submission advanced by both sides in light of records placed before us.

9.1. Admittedly, the issues raised by assessee in the present appeal in the main grounds as well as in the application for admission of additional grounds, has been already decided against assessee and is no longer *resintegra*.

9.2. After considering the merits of the issues in the light of decisions referred to herein above and relied by both sides, has to be dismissed as per the ratio laid down by *Hon'ble Supreme Court* in the case of *Chambal Fertilizers (supra)* and *Hon'be Mumabi Special Bench* in the case of *Total Oil India Pvt.Ltd. (Supra)*.

Accordingly ground No.3 and additional ground No.2 and additional ground raised by the assessee is stands dismissed.

9.3 Ground No.1 is submitted to be not pressed by assessee.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in court on 9th day of October, 2023

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

Bangalore,

Dated, 9th October, 2023

/ vms /

Copy to:

- 1) Applicant
- 2) Respondent
- 3) CIT
- 4) CIT(A)
- 5)DR, ITAT, Bangalore.
- 6) Guard file

Sd/-

(BEENA PILLAI)

Judicial Member

By order

Asst. Registrar, ITAT, Bangalore