

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.2487/MUM/2022 (A.Y. 2017-18)**

Legrand Nederland B.V. 61/62, 6 <sup>th</sup> Floor Kalpatru Square, Kondivita Road Off. Andheri Road, Andheri (E) Mumbai - 400059  <b>PAN: AACCL1156B</b>	v.	ACIT (Intl. Taxation) – 3(1)(2) 16 <sup>th</sup> Floor, Air India Building Nariman Point, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	:	<b>Shri P.J. Pardiwala &amp; Shri Prayas Jain</b>
<b>Department Represented by</b>	:	<b>Shri Amit Kumar Soni</b>
<b>Date of Conclusion of Hearing</b>	:	<b>17.07.2023</b>
<b>Date of Pronouncement</b>	:	<b>13.10.2023</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** This appeal is filed by the assessee against the final Assessment Order and directions of the Dispute Resolution Panel of Learned Commissioner of Income Tax (DRP-1), Mumbai-3 [hereinafter in short "Ld.DRP"] dated 28.06.2022 for the A.Y.2017-18 passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

**2. Assessee has raised following grounds in its appeal: -**

"1. On the facts and in circumstances of the case and in law, the AO/ DRP has erred in treating the capital gains of INR 138,47.19,180 as dividend under section 2(22)(d) of the Income-tax Act, 1961 (the Act), out of the total capital gains of INR 275,20,00,000 arising pursuant to capital reduction by the Indian company. Novateur Electrical and Digital Systems Private Limited ("Novateur")

2. Further, in treating the capital gains as dividend, the AO/ DRP erred in recomputing the accumulated profit as against the actual accumulated loss of Novateur as on the date of capital reduction

3. Without prejudice to the above, even if the aforesaid amount is considered as dividend, the AO/ DRP has erred in taxing the alleged dividend in the hands of the Appellant by holding that section 115-0 of the Act does not apply in case of deemed dividend as per section 2(22)(d) of the Act and hence, dividend as per section 2(22)(d) of the Act is not exempt under section 10(34) of the Act.

4. Without prejudice to the above, even if the aforesaid amount is assumed to be dividend and dividend is not considered to be exempt under section 10(34) of the Act, the AO/ DRP has erred in considering tax rate of 10% as per India-Netherlands tax treaty (hereinafter referred as "the Tax Treaty") instead of the tax rate of 5% on dividend as per the Most Favoured Nation or MFN Clause of Tax Treaty (read with protocol to the Tax Treaty).

5. On the facts and in circumstances of the case and in law, the AO/ DRP has erred in not treating capital gains arising pursuant to capital reduction by Novateur as exempt from tax in view of Article 13 of the Tax Treaty and also erred in not granting refund along with interest under section 244A of the Act to the Appellant.

6. Without prejudice to above, even if the dividend is taxed at 10% as per the Tax Treaty, the AO erred in levying the surcharge and education cess on tax treaty rate in relation to amount of dividend. Consequently, the AO further erred in not correctly computing the tax liability and refund along with interest under section 244A of the Act in the computation sheet attached to the assessment order under 143(3) r.w.s.144C(13).

7. The AO erred in initiating penalty proceedings under Section 270A of the Act."

3. We proceed to adjudicate the issues raised by the assessee ground wise.

4. Ground Nos.1 and 2 are interlinked and relevant facts relating to these grounds are, assessee is a company incorporated in the Netherlands and is a tax resident of the Netherlands. The assessee held 48.659% shares of Novateur Electrical and Digital Systems Private Limited, India ("Novateur India"). During the previous year relevant to the AY 2017-18, 8,00,00,000 shares held by the assessee in Novateur India were cancelled on 06.10.2016 under a scheme of capital reduction undertaken by Novateur India. The assessee received ₹.375,20,00,000 as consideration against cancellation of shares held by it. According to assessee, Novateur India had accumulated losses as on the date of capital reduction (06.10.2016). Accordingly, Novateur India computed the capital gains arising on such reduction at ₹.275,20,00,000 by treating the consideration of ₹.375.20,00,000 as full value of consideration and reducing the cost of shares of ₹.100,00,00,000. Further, taxes were withheld at 10.515% at the time of payment of consideration in view of section 112(1)(c)(iii) of the Act. The assessee filed its tax return for the AY 2017-18 and offered the capital gains to tax. During the assessment proceedings, the assessee made a claim

before the Assessing Officer that the capital gain arising on cancellation of shares pursuant to the capital reduction undertaken by Novateur India is not taxable in India in view of Article 13(5) of the India - Netherlands tax treaty (hereinafter referred as "the tax treaty").

**5.** During the assessment proceedings, Assessing Officer considered the issue and he was of the view that the assessee did not have any accumulated loss as on date of capital reduction, but it had accumulated profits as on that date. In this regard, the Assessing Officer observed that Indian Accounting Standard became applicable to the assessee with effect from the FY 2015-16 and accordingly, the opening balance for computing accumulated profit should be considered as per Indian Accounting Standard instead of considering opening balance as per Indian Generally Accepted Accounting Principles (GAAP). In view of the above and relying on the judgement of the Hon'ble Supreme Court in case of G Narsimhan [1999] 236 ITR 327 (SC), the Assessing Officer divided the entire consideration of ₹.375,20,00,000 into two parts, i.e, dividend to the extent of accumulated profits (₹.138,47,19,180) and balance amount of ₹.236,72,80,820 as consideration for the transfer of the shares Capital Gains of ₹.136,72,80,820 were determined after reducing the cost of ₹.100,00,00,000 in the final assessment order. The

working of the accumulated loss computed by the assessee is extracted in Para No.3.4.1 on Page No. 13 of the final assessment order whereas the working of accumulated profit computed by the Assessing Officer is discussed in Para No. 3.4.2 on Page No.14 of the final assessment order. Further, the Assessing Officer taxed the alleged dividend in the hands of the assessee and denied the exemption under section 10(34) of the Act (which is available if the income is in the nature of dividend referred to in the section 115-O of the Act). The exemption was denied on the premise that Novateur India has not paid Dividend Distribution Tax (DDT) and that dividend on account of capital reduction does not fall u/s. 115-O of the Act.

**6.** Aggrieved with the above order, assessee preferred objection before Learned Dispute Resolution Panel [hereinafter in short "Ld. DRP"] and filed its submissions. After considering the submissions of the assessee, they sustained the action of the Assessing Officer. The Ld.DRP held that the Balance Sheet prepared as on 31.03.2016 in accordance with Indian Accounting Standard is the relevant balance sheet for all financial affairs, including the computation of accumulated profits/(losses). In this regard, the Ld.DRP provided arguments which are reproduced by the Assessing Officer in the final assessment order

from paras 3.4.4 to 3.4.11 at page 14 to page 16 of the final assessment order dated 29.07.2022 (hereinafter as 'final assessment order').

**7.** Before us, at the time of hearing, Ld. AR of the assessee submitted that Assessing Officer / Ld.DRP have grossly erred in holding that the opening balance as on 01.04.2016 for computation of the accumulated profit / (losses) as on date of capital reduction should be considered as per the amount taken up in accordance with the Indian Accounting Standard. Further, Ld. AR of the assessee submitted the following in support of its position: -

- The financial statements of Novateur India were prepared, audited, and approved by the shareholders in line with the Indian GAAP till the FY 2015-16.
- Accordingly, the accumulated loss as on 31.03.2016 as per the audited financial statements (i.e. ₹.441.54 crores) was crystalized pursuant to adoption of the accounts by the shareholders in the Annual General Meeting of the company. Consequently, that amount became sacrosanct and cannot be altered

- Indian Accounting Standard became applicable to Novateur India from the FY 2016-17. The amount of accumulated loss as on 31.03.2016 / 01.04.2016 was reinstated from ₹.441.84 crores to ₹.7.55 crores having regard to Indian Accounting Standard provisions, in the financial statements for FY 2016-17 only for the comparative purpose whereby the assessee was required to present the opening figures as on 01.04.2016 in sync with the manner in which the figures are reflected for 31.03.2017. In this regard, a requisite disclosure has been made in the audited financial statements for FY 2016-17 at 'point – II.a.i.' of Note 1- Statement of significant accounting policies, which is reproduced below: -

*"(i) Compliance with Ind AS*

*These financial statements have been prepared in accordance with the Indian Accounting Standards (hereinafter referred to as 'Ind AS') as notified by Ministry of Corporate Affairs pursuant to Section 133 of the Companies Act, 2013 (Act') read with the Companies (Indian Accounting Standard) Rules, 2013 that are notified (as amended) and effective as at 31 March 2015 and other relevant provisions of the Act.*

*These financial statements for the year ended 31 March, 2017 are the first financial statement prepared to the company under Ind AS For all previous periods up to and including the year ended 31 March 2016 the company has prepared its financial Statements in accordance with the accounting standards notified under companies (Accounting Standard) rule. 2006 (as amended) (hereinafter referred to as "Previous GAAP and other relevant provisions of the Act*

*used for its statutory reporting requirement in India immediately before adoption of Ind AS. period numbers in the financial statements have been restated to Ind AS. In accordance with Ind AS 101 First-time adoption of Indian Accounting Standards, the company has presented a reconciliation from the presentation of financial statements under previous GAAP to Ind AS shareholders' equity as at 31 March, 2016 and 1 April 2015 and of the comprehensive income for the year ended 31" March, 2016 (refer note 49 for information on how the company has adopted IndAS)....."*

**8.** It is pertinent to note that, the fact that Novateur India had accumulated loss as on date of capital reduction, has been accepted by its Assessing Officer in the assessment of Novateur India for AY2017-18. It should be noted that the following specific query was asked by the Assessing Officer of Novateur India during its assessment proceedings with respect to applicability of Indian Accounting Standard and computation of accumulated profit.

*"You have made foreign remittance of INR 37.520 lakh for reduction in share capital to M/s Legrand Nederland BV Netherlands during the under consideration. As per information available in this office, as per Ind AS accounting standards which was compulsory from FY 2016-17, you have positive accumulated profit, therefore, please explain why the provisions of section 2(22)(d) should not be applied in your case (Please refer page no. 145 of the paper book)*

**9.** In response to the above, the Novateur India filed a detailed submission (Page No. 147-148 of the paper book) explaining that Novateur India had accumulated loss as on the date of capital reduction and hence, there was no question of section 2(22)(d) be applied. The

same was /accepted by the Assessing Officer. (Page No 149-186 of the paper book for the assessment order of Novateur India for AY 2017-18).

Ld. AR of the assessee submitted that once it is accepted in the assessment of Novateur India that Novateur India had accumulated loss as of date of capital reduction, would not be open to the Tax Department to take a contrary position in the assessment of the assessee.

**10.** In light of the above, Ld. AR of the assessee submitted that the balance as on 31.03.2016/ 01.04.2016, for computation of accumulated loss as on date of capital reduction should be considered as per the audited financial statements prepared as per Indian GAAP and not as per Indian Accounting Standard, which became applicable from the F.Y.2016-17 and the reinstatement of figures as of April 2016 was done only for comparative disclosure purpose. Ld. AR submitted that there is no question of any part of the consideration received by it on the reduction of the share capital being characterized as dividend under section 2(22)(d) of the Act as there was an accumulated loss of ₹.295.82 crores as on the date of capital reduction. Hence, section 2(22)(d) of the Act was not applicable in its case and the entire consideration is to be considered as a consideration for the transfer of

the shares on reduction. This position was adopted in accordance with the judgement of the Hon'ble Supreme Court in the case of G Narsimhan [1999] 236 ITR 327 (SC). Therefore, Ld. AR of the assessee prayed that the action of the Assessing Officer in considering amount of ₹.138.47.19.180 as dividend u/s. 2(22)(d) of the Act is incorrect and should be quashed.

**11.** On the other hand, Ld.DR relied on the orders of the Authorities below and heavily relied on the findings of Ld DRP on the issue of accumulated profit determined by the assessing officer.

**12.** Considered the rival submissions and material placed on record, we observe from the record that the assessee has received compensation for reduction of share capital of ₹.375.20 crores during the current assessment year. The assessee has declared the difference of compensation and investment as capital gains. However, during assessment proceedings, the Assessing Officer observed that the Novateur India has accumulated profit as on the date of reduction of share capital as per the balance sheet declared by the Novateur India. Accordingly, Assessing Officer has treated the amount proportionate to the accumulated profit as dividend u/s 2(22)(d) of the Act. Before us,

the Ld AR submitted that the financial statements of Novateur India were prepared, audited and approved by the shareholders in line with the Indian GAAP till FY 2015-16. Accordingly, the accumulated loss as on 31.03.2016 as per the audited financial statements (i.e. ₹.441.54 crores) was crystallized pursuant to adoption of the accounts by the shareholders in the Annual General Meeting of the company. Consequently, that amount became sacrosanct and cannot be altered. Since the Novateur India has to adopt the Indian Accounting Standard from FY 2016-17, the accumulated loss as on 31.03.2016 was reinstated from ₹.441.84 crores to ₹.7.55 crores in the financial statement prepared for FY 2016-17. It is only for the comparative purpose whereby the company was required to present the opening figures as on 1.4.2016 in sync with the requirement to present the financial statement for 31.03.2017. The same was disclosed in the notes to statement of significant accounting policies.

**13.** After considering the submissions, we observe that the migration from IGAAP to Ind-AS was mandated for better presentation of financial statements and for the purpose of uniform and standard presentation of financials keeping in mind the universal applicability. In our view, the financial statement prepared and approved by the share holders prior to

Ind-AS are based on policies and method of accounting adopted by the assesseees. As per the new Ind-AS, general accepted policies and method in line with the global acceptance are being adopted to present the financials of the company. In order to achieve the transition, Ind-AS 101 was introduced to facilitate the companies to prepare the first balance sheet. This requires the companies to prepare the current (FY2016-17) and previous year (FY 2015-16) balance sheet by adopting the new and accepted policies and method proposed in the Ind-AS. The argument that the figures reinstated is only comparative purpose is not proper considering the fact that the reinstated figures are based on the new accounting method and new policies as per the Ind-AS, which the company proposes to follow consistently in the future. The reinstated figures are not for past performance but for the future adoption of the policies. The reinstated figures are the actual status and financial position of the company based on the accepted new method of accounting proposed in the Ind-AS. The balance sheet adopted by the share holders as on 31.03.2016 are based on the previous set of accounting method as per Indian GAAP and when the company adopts the new accounting standards as per Ind AS, the assets and liabilities in the balance sheet will certainly change. The changes in the assets and liabilities are reflected in the reinstatement of figures declared by the

company in the current financial year. The argument put forth by the assessee cannot be accepted. The figure declared by the assessee in the balance sheet in the retained earning opening balance sheet is the actual accumulated loss carried forward by the company Novateur India based on the adoption of new accounting policies. Hence, Ground Nos.1 and 2 are dismissed.

**14.** Further it was argued that in the assessment proceedings of Novateur India, the assessing officer has accepted the submissions of the company and it amounts to acceptance of the department that the figures declared by them are proper and same has to adopted in the case of the assessee. We observe from the assessment order of Novateur India that the Assessing Officer has not discussed anything on this issue. The Assessing Officer might have enquired but he has not given his complete findings in the order, it does not give the impression that he has accepted the loss figures declared by the assessee. Both the assessments are independent and if there is any financial impact, we could consider the same in both the assessments. Merely because the Assessing Officer has collected the information and not discussed anything in the assessment order, we cannot presume his acceptance. Therefore, we are inclined to follow the accumulated loss declared by

the Novateur India in their reinstated balance sheet as the proper accumulated loss based on the new set of accounting method and policies adopted by them and it is not mere comparative figures. Hence, the accumulated profit determined by the tax authorities are proper and the determination of dividend as per section 2(22)(d) is proper, accordingly sustain their findings.

**15.** With regard to Ground No. 3, brief facts are, considering the facts mentioned above, in the final assessment order, the Assessing Officer held that exemption under section 10(34) would be applicable only for the amount, which has suffered tax under section 115-O of the Act. Further, the Assessing Officer observed that section 115-O of the Act has got application where a domestic company is distributing profits. In the case of deemed dividend, no profits are explicitly distributed by the domestic company, and essentially, it is upon the assessing authorities to bring the receipt to tax under an explicit deeming provision, there is no question of applicability of section 115-O. However, the assessee submitted that the Explanation below section 115-Q puts it beyond any pale of doubt and excludes sub clause (d) of Section 2(22) from the expression "dividend" for the purposes of Chapter XII-D (containing

section 115(O) to 115(Q)). Therefore, the assessee has to be given benefits of claiming deduction under section 10(34) of the Act.

**16.** Before us, at the time of hearing, Ld. AR of the assessee submitted that, he wishes to bring to our attention to the Explanation below section 115Q of the Act, which was omitted by the Finance Act 2018, w.e.f 01.04.2018. Prior to its omission, the Explanation read as under:

*"Explanation. For the purposes of this chapter, the expression "dividends" shall have the same meaning as is given to "dividend" in clause (22) of section 2 but shall not include sub-clause (e) thereof."*

**17.** Chapter XII-D contains provisions from section 115-O to section 115Q of the Act. Therefore, in view of the above Explanation, it should be noted that only sub-clause (e) of section 2(22) of the Act was excluded from the definition of "dividend" for the purpose of section 115-O of the Act. However, he submitted that the AO/Ld.DRP has completely misinterpreted the Explanation while holding that deemed dividend under section 2(22)(d) of the Act stands excluded from the definition of "dividend" for the purpose of Chapter XII-D. The contention of the AO/Ld.DRP is completely incorrect since the exclusion provided by

the Explanation is for deemed dividend under section 2(22)(e) and not for deemed dividend under section 2(22)(d) of the Act.

**18.** Further, Ld. AR of the assessee submitted that, as per section 115O of the Act, the company paying the dividend is liable to pay additional tax on any amount declared, distributed, or paid as dividend by such company. Consequently, such dividend income is exempt in the hands of the shareholder as per section 10(34) of the Act.

**19.** As per section 10(34) of the Act, any income by way of dividends referred to in section 115-O of the Act shall not be included in computing the total income of the shareholder i.e, it shall be exempt from tax in hands of the shareholder. In view of the above, the Ld. AR submitted that even if this amount is held to be dividend under section 2(22)(d) of the Act as characterized by the Assessing Officer, the same will be exempt under section 10(34) of the Act in the hands of the assessee.

**20.** In support of the above contention Ld. AR of the assessee relied on the case of Pr.CIT *v.* Smt. KayanJamshidPandole [2018] 100

taxmann.com 284 (Bombay) wherein the jurisdictional Hon'ble Bombay High Court held as under-

*".....An explanation to Section 115-Q which existed at the relevant time but which was omitted by the Finance Act, 2018 and provided that for the purposes of the said Chapter Chapter XIID) which contains Section 115-0 and 115-Q, the expression "dividend" shall have the same meaning as it given to dividend under Sub-Section (22) of Section 2, but shall not include sub- clause (e) thereof.*

*The plain effect of the explanation, therefore, would be that even the deemed dividend under Section2(22)(d) of the Act would be covered for the purpose of Chapter XIID. In turn, therefore, such deemed dividend would be one which is referred to Section 115-0 of the Act Inescapable conclusion, therefore, would be that such dividend also would be exempt from tax in the hands of the receiver in terms of Section10(34) of the Act.*

*The contention of the counsel for the Revenue that the company having not paid such dividend distribution tax, exemption under Section 10(34) should be deprived to the assessee needs to be noted only for rejection. If a certain income is exempt at the hands of recipient by virtue of statutory provision, unless a provision is made in the statute itself, such exemption cannot be withdrawn only because the payer has not paid tax. The statute has made specific provision for recovery or unpaid tax from the company. In the result, the tax appeal is dismissed"*

**21.** On the other hand, Ld.DR on the issue of section 10(34) relied on the order of the Authorities below and in particular page 24 of DRP order. Further, he submitted that it is not relevant what happened in the case of Indian entity assessments i.e., Novateur India.

**22.** Considered the rival submissions and material placed on record, we observe from the record that the claim of the assessee that the deemed dividend u/s 2(22)(d) is also eligible to claim exemption

u/s.10(34) of the Act- since the provisions of the section 115-O does cover the definition of dividend except specifically as mentioned in the proviso to section 115Q of the Act. It relied on the ratio of the decision of Hon'ble Bombay in the case of Smt. Kayan Jamshid Pandole (supra). The revenue has rejected the same while considering the issue under consideration. It is fact on record that at that point of time, the proviso to section 115Q was applicable, where the legislature has excluded only the deemed dividend in the case of 2(22)(e), it means definition of dividend applicable in the case of section 115-O would be only the definition contained in section 2(22) except clause (e). From the above it is clear that the deemed dividend u/s 2(22)(d) is applicable in the case of Novateur India and they have not paid the Dividend Distribution Tax (DDT) and the assessee submits before us that it does not preclude the assessee to claim the benefit u/s 10(34) of the Act. As per the decision of the Hon'ble High Court , **If a certain income is exempt at the hands of recipient by virtue of statutory provision, unless a provision is made in the statute itself, such exemption cannot be withdrawn only because the payer has not paid tax. The statute has made specific provision for recovery or unpaid tax from the company.** From the above decision, the Hon'ble High Court gave the decision in favour of the assessee considering the fact the

share holder should not suffer on the failure of the company, the revenue can recover from the company with the other specific provisions for recovery. The ratio of the decision clearly shows that the individual share holders should not suffer because of gross failure on the part of the company. We observe the fact in the present case is distinguishable to the fact in the above case. In the present case, the assessee is a holding company holding majority shares (By B Ticino SPA – Holding company and the assessee holding 99.999%) in the Novateur India. Basically, the management of the Novateur India is controlled by them and the failure of the Novateur India to pay additional tax in the form of DDT is nothing but failure of the assessee itself. They cannot claim the benefit both sides. In the case of Smt Kayan Jamshbid Pandole (supra), the group of individual share holders does not have any control over the company whereas in the given case, the situation is different. One hand, we cannot hold the Novateur India as defaulter and other hand, we cannot allow the same management to take the advantage of benefit u/s 10(34) of the Act for the failure of the same management. It is fact on record that Novateur India has not paid any DDT on the dividend, hence the benefit u/s.10(34) cannot be claimed even though the definition of dividend u/s.2(22)(d) is covered u/s 1150 of the Act.

**23.** In another perspective, the assessee has received the gross dividend including DDT. In the normal case, the company will deduct DDT at the applicable rate and remit the net dividend. Therefore, as per the provisions of section 10(34) r.w.s. 1150 the dividend received by the shareholders are exempt. In this case, the assessee has received gross dividend. The option available to the assessee is two-fold, considering the fact that same management is responsible to deduct DDT. Either they should remit the DDT to the Novateur India and Novateur India will remit the DDT and thus assessee can claim exemption or other option is to pay the applicable tax under DTAA on the Gross dividend received by them which has lower rate of taxation. Therefore, we are inclined to reject the factual submissions of the assessee and accordingly, the plea raised by the assessee in the Ground No 3 is rejected.

**24.** With regard to Ground No. 4, brief facts are, the AO/Ld.DRP rejected the assessee's claim that if the alleged dividend is taxed in the hands of the assessee, the applicable tax rate should be considered as 5% in view of the Most Favoured Nation or MFN Clause of the tax treaty (read with the protocol to the Tax Treaty). Issuance of notification is part of legislative requirement to implement a DTAA, which has not been done so far to import restrictive scope of FTS/FIS (from other DTAAS) or

to apply a lower rate of taxation for royalty. It is thus important to issue a notification to import a lower rate of taxation of dividend if the Government intends to import the provision relating thereof of other treaties or the lower rate of taxation of dividend in other treaties into the India Netherlands DTAA. It is pointed out that in the present case, this legal requirement of notification has not been complied with and, therefore, it needs to be appreciated that the Government did not intend to extend the benefit of lower rate of taxation on dividend as found, for example, in the India Slovenia DTAA into the India Netherlands DTAA.

**25.** Before us, Ld. AR of the assessee submitted that, assessee is tax resident of the Netherlands, and the tax treaty has a protocol which contains a Most Favoured Nation (MFN") clause (Sub para 2 of Para IV of the Protocol). The MFN clause in the protocol to the tax treaty is reproduced as under-

*"If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention.*

**26.** The MFN clause in the tax treaty covers the situation where India limits its right of taxation as a source country under a tax treaty with another OECD member on account of a lower tax rate as compared to the rate provided in the tax treaty. The MFN clause makes it clear that same rate as provided in the tax treaty with such OECD member shall apply and to that extent India's rights as a source country will get limited. Subsequent to tax treaty protocol, India has entered into DTAA with Slovenia which is an OECD member and in terms thereof the tax rate on dividend is not to exceed 5% of gross amount of dividend. Accordingly, in view of MFN clause in the tax treaty and tax rate on dividend under India-Slovenia DTAA, the dividend tax rate under the tax treaty shall also not exceed 5%. Similarly, India has entered into DTAA with Lithuania and Columbia (OECD members) which also provide that tax rate on dividend should not exceed 5% on gross amount of dividend.

**27.** In support of the above contention, Ld. AR of the assessee relied on the order of Hon'ble Delhi High Court in the case of Concentrix Services Netherlands B.V. v. ITO (2021) 434 ITR 516 (Delhi) and Nestle SA v. Assessing Officer Circle (W.P.(C) 3243/2021)., where a similar contention urged by the assessee therein stands accepted.

**28.** Further, Ld. AR of the assessee submitted that, in addition to the above and in response to the AO/Ld.DRP's conclusions, Ld.AR submitted that once a double tax avoidance agreement ("DTAA) is notified and comes into force, the entire tax treaty becomes applicable. It is not necessary to issue a separate notification to make the protocol effective. In this regard, reliance is placed, in addition of the aforementioned judgements, on the judgement of Hon'ble Delhi High Court in case of Steria (India) Ltd. v.CIT [2016] 386 ITR 390 (Delhi) and Pune ITAT in case of GRI Renewable Industries S.L. v. ACIT (IT) [20221 100 ITRCT) 470 (Pune-Trib.)]

**29.** In view of the above, Ld. AR of the assessee submitted that if at all the alleged dividend is taxed in the hands of the assessee (which it is not taxable at all), the tax rate on dividend should not exceed 5% as per the MFN Clause of tax treaty (read with protocol to the tax treaty).

**30.** On the other hand, Ld. DR relied on the order of the Authorities below and further submitted that there is no notification for the above purpose and it is not approved under section 90(2) of the Act. He relied on the findings of Ld DRP in this regard.

**31.** Considered the rival submissions and material placed on record, we observe from the submissions that the assessee claims the MFN clause benefit in case the above said dividend is taxable under DTAA. On careful consideration of the facts, in our considered view, the deemed dividend is chargeable to tax in India and the assessee being tax resident of Netherlands and eligible to claim the benefit under DTAA. We held that the compensation received by the assessee against the reduction of share capital, to the extent of accumulated profit is taxable under the head dividend by invoking the provisions of section 2(22)(d) r.w.s. 56(2)(i) of the Act. Since, the dividend income is taxable and the assessee is eligible to take the benefit under DTAA. Before us, assessee has pleaded to invoke MFN clause under the treaty to claim beneficial rate of tax @5% instead of 10% provided under Article 10 of India-Netherland DTAA. In support the assessee has relied upon following judgments:-

- (i) *Concentrix Services Netherlands B.V. v. ITO (2021) 434 ITR 516 (Delhi)*
- (ii) *Nestle SA v. Assessing Officer Circle (W.P.(C) 3243/2021),,*
- (iii) *Steria (India) Ltd. v.CIT [2016] 386 ITR 390 (Delhi)*

**32.** The lower rate of 5% is based on the reasoning that India had entered into DTAA with Slovenia which became member of the OECD in

the year 2010 which provides for lower rate of tax @5% and also later on with Lithuania which became OECD member in 2018. It is relevant to note here that CBDT vide Circular No. 3 of 2022 dated 03<sup>rd</sup> Feb, 2022, had brought the clarification that such unilateral decree / bulletin do not represent the stand of India as a treaty partners on applicability of the MFN clause, without taking into bilateral consultation with India and therefore, does not have a binding force. India has expressed its strong reservation stating that such unilateral action cannot be imported into the DTAA unless the third State was the member of the OECD at the time of signing that treaty. The CBDT has clearly expressed that there is a requirement that the third State is to be member of the OECD both at the time of conclusion of the Treaty with India as well as at the time of applicability of MFN clause. In other words, these countries could not have made it effective from the date of entry into force of India DTAA with the third State as the third State was not the member of the OECD on such date of entry into force. Therefore, the stand of the Revenue is that no benefit can be given to the countries with which India has MFN clause to give the benefit or the third State which was not the member of the OECD when India entered into DTAA with it.

**33.** Another important fact that it has been stated in the CBDT that notification u/s.90 has to be issued which is a mandatory condition for giving another status and then only benefits of the treaties with Slovenia and Lithuania to the treaties of Netherland can be given for which various conditions have been laid down in the said circular. Though the Hon'ble Delhi High Court in the case of Concentrix Services Netherlands B.V. *v.* ITO (434 ITR 516) has held that the decree issued by the authorities of Netherland on 28<sup>th</sup> February 2012 giving unilateral interpretation have to be accepted and held that lower rate of 5% shall be applicable on the dividend paid by the companies resident of the Netherland paid to a resident in India. Though, this judgment has been challenged by the revenue before the Hon'ble Supreme Court and the judgment of the Hon'ble Supreme Court is still awaited. Be that as may be whether CBDT Circular issued post the judgment of the Hon'ble Delhi High Court would be applicable or not and what would be the fate of this issue by the Hon'ble Supreme Court.

**34.** We find that protocol between India and Netherland that there is limitation period applicable to Articles 10, 11 and 12 to raise the issue claiming excess tax payment. For the sake of clarity, it is reproduced below the clause IV of the treaty: -

*IV. Ad Articles 10, 11 and 12*

*1. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.*

*2. If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention."*

**35.** From the above it is clear that where tax has been levied at source at excess under the provisions of Article 10 to 12, applications for refund of the same have to be lodged with the competent authority of the state which levied the tax within a period of three years after the expiration of the calendar year in which the tax has been levied. In this case, the tax under DTAA rates were levied by the Assessing Officer. Now the assessee takes the plea that in case the dividend income is chargeable to tax then the applicable rate would be based on the MFN clause, which is lesser than the applicable treaty rate. As discussed above, in this case, Assessing Officer has levied the applicable tax, the period of claiming the excess tax has already elapsed. Therefore, in this case, the assessee

cannot claim any benefit under treaty or under MFN clause. Therefore, we are not inclined to entertain the claim of the assessee at this stage based on the above discussion. Accordingly, the ground raised by the assessee is dismissed even though they relied on the decision of Hon'ble High Court, in our view, the issue raised is time barred and even the CBDT has raised circular objecting to unilateral implementation of protocol by the Netherland. Unless it is notified by the Indian government under section 90(2) of the Act. Accordingly, Ground No. 4 is dismissed.

**36.** With regard to Ground No. 5, brief facts are, during the course assessment proceedings, the assessee claimed that the capital gain of ₹.275,20,00,000 is not taxable in India as per the para 5 of Article 13 of the Tax Treaty. Assessing Officer/ Ld. DRP are of the opinion that the alienation of shares was made to Novateur India, which is a resident of India. Hence, the capital gain is liable to tax in India. Further, the assessee's case does not fall under the expression "organization, reorganization, amalgamation, division or any transaction of similar nature" as the capital reduction was carried out for returning the excess capital to the shareholder.

**37.** Before us, Ld. AR of the assessee submitted that Article 13 of the tax treaty deals with taxation of Capital Gains. Para No. 1 to Para No. 4 are not applicable to the case as Para No. 1 deals with gains from alienation of immovable property, Para No. 2 deals with gains from the alienation of movable property forming part of the business property of a permanent establishment, Para No.3 deals with gains from the alienation of ships or aircraft. Para No. 4 deals with gains derived from alienation of shares deriving value principally from immovable property situated in India. Para No. 4 will not apply to the assessee as Novateur India is a full-fledged manufacturing company and its shares do not derive value principally from immovable property in India.

**38.** Para No. 5 deals with gains from the alienation of any property other than that referred to in Para No. 1, 2, 3 and 4. Para No.5 is reproduced below: -

*"5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident.*

*However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, much gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization,*

*amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other."*

**39.** The above mentioned Para 5 of Article 13 is divided into three limbs as under –

- **First limb**-Gains from the alienation of any property other than that referred to in paragraphs 1,2,3 and 4 shall be taxable only in the State of which the alienator (i.e., the assessee) is a resident (ie., Netherlands).
- **Second limb**-This carves out an exception to the first limb and provide that the gains from the alienation of shares issued by a company resident in the other State (ie., India) which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State (ie, India) **if the alienation takes place to a resident of that other State (ie., India)**
- **Third limb**-The third limb in turn is an exception of the second limb. It provides that such gains shall remain taxable only in the State of which the alienator is a resident (i.e... Netherlands) if such gains are realised in the course of a **corporate organisation**, reorganization, amalgamation, division **or similar transaction**, and the buyer or the seller owns at least 10 per cent of the capital of the other.

**40.** Ld. AR of the assessee submitted that the assessee's case falls under the first limb of Para No. 5 of Article 13 of the tax treaty as, undisputedly, in the scheme of capital reduction, there is an alienation of shares on account of the shares getting cancelled as a consequence of the reduction. Accordingly, as per the first limb, the Netherlands has the exclusive right to tax the capital gain on such alienation. Therefore,

capital gain arising to the assessee pursuant to the capital reduction by Novateur India is taxable only in Netherlands and not in India.

**41.** The second limb as noted earlier is an exception to the first limb. The second limb allocates the taxing right on gains on alienation of shares to India provided the following conditions are satisfied: -

- *the alienator must have at least 10% of shares in the capital stock of a company resident in India; and*
- *the alienation must take place to a resident of India.*

**42.** Ld. AR of the assessee submitted that assessee case does not fall under the second limb as it does not satisfy the second condition i.e., in the assessee's case, the alienation did not take place to a resident of India. This is because in case of a capital reduction, the shares get cancelled and the ownership thereof does not vest in any person who is a resident of India. Novateur India did not become the owner of the shares pursuant to the alienation by the assessee; the shares got cancelled pursuant to the scheme of capital reduction being approved by the Court/ National Company Law Tribunal.

**43.** Furthermore, the third limb is an exception to the second limb and would need to be evaluated only if the case falls in the second limb (i.e.,

if the reduction is considered as an alienation to a resident of India) Despite the same, the third limb takes away the taxing rights from India in favour of Netherlands. The third limb states that capital gains shall remain taxable only in the Netherlands if such capital gains are realized in the course of a corporate organisation, reorganisation, amalgamation, division, or similar transaction. Since the assessee's case falls under first limb (ie, it is an alienation by way of cancellation of shares pursuant to capital reduction) and it does not fall under the second limb (ie, it is not an alienation to a resident), therefore it would not be required to test the third limb (i.e. alienation of shares in the course of organisation, reorganisation.....).

**44.** Ld. AR of the assessee, further, submitted that, without prejudice to the assessee's claim that its case falls under the first limb and its gains are taxable only in Netherlands, if Your Honors hold that the second limb applies to the assessee's case, then, the assessee submits that its case will fall under the carved out in the third limb of Para 5 of Article 13 of the tax treaty ie, capital gains arising to assessee pursuant to capital reduction would qualify as gains realised in the course of corporate organisation, reorganisation, amalgamation, division or similar transaction. This is so because a scheme of capital reduction leads to

change in the capital structure of the company which tantamount to reorganisation. Consequently, the capital gains arising pursuant to capital reduction will be taxable in Netherlands only.

**45.** In this connection, Ld. AR of the assessee draw our attention to the meaning of the word 'reorganisation' as defined in 'P Ramanatha Aiyar Advanced Law Lexicon' The word 'reorganisation is defined as under-

*"Reorganization of a company is amalgamation or readjustment when one company acquires another by way of merger, or a single company divides into two or more entitles or a company makes a substantial change in its capital structure"*

**46.** In view of the above, the assessee submits that the capital reduction undertaken by Novateur India has resulted in reorganisation since there is a change in the capital structure of Novateur India. pursuant to reduction of its share capital.

**47.** In view of the above submissions, Ld. AR of the assessee submitted that the capital gain of ₹.275,20,00,000 arising to the assessee on cancellation of shares of Novateur India pursuant to its capital reduction is taxable only in Netherlands and not in India as per Para 5 of Article 13 of the tax treaty and he prayed to direct the

Assessing Officer to grant refund of ₹.29,76,28,800 along with interest under section 244A of the Act to the assessee.

**48.** On the other hand, Ld.DR relied on the order of the Authorities below and submitted that it is unilateral decision of Indian entity and there is no reorganization happened in this case. It is only return of excess generation of cash by the Indian entity to the parent company and relied particularly on the findings of Ld DRP at Page No. 33 of the decision.

**49.** Considered the rival submissions and material placed on record, as discussed earlier the facts of this case, the facts are discussed again for this ground for clarity and better understanding, Legrand Netherland B.V. (LNBV) is a Netherland entity and a tax resident of Netherland. It held 48.659% shares in Novateur Electrical & Digital System Pvt. Ltd, India (Novateur India) which is an Indian entity. In the previous year of A.Y. 2017-18, 80 lakhs shares held by LNBV in NOVATEUR INDIA was cancelled on 06/10/2016 under a scheme of capital reduction undertaken by NOVATEUR INDIA. Pursuant to the scheme of capital reduction approved by NCLT, the NDBV received ₹.372.20 Crores as consideration against cancellation of shares. NOVATEUR INDIA

computed the capital gains arising on such reduction at ₹.275.20 Crores by treating the consideration of ₹.375.20 Crores as full value of consideration and reducing the cost of shares of ₹.100 Crores. Accordingly, taxes were withheld @10.815% u/s.112(1)(c)(iii). The Netherland entity filed its tax return and offered the same as capital gains. However, during the course of assessment proceedings, assessee made a claim before the Assessing Officer that the capital gains arising on cancellation of shares pursuant to capital reduction is not taxable in India in view of Article 13(5) of India Netherland DTAA.

**50.** The Article 13 reads as under: -

ARTICLE 13  
**CAPITAL GAINS**

*1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other State may be taxed in that other State.*

*2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.*

*3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For*

*the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.*

*4. Gains derived by a resident of one of the States from the alienation of shares (other than shares quoted on an approved stock exchange) forming part of a substantial interest in the capital stock of a company which is a resident of the other State, the value of which shares is derived principally from immovable property situated in that other State other than property in which the business of the company was carried on, may be taxed in that other State. A substantial interest exists when the resident owns 25 per cent or more of the shares of the capital stock of a company.*

*5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident.*

*However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, such gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other.*

*6. The provisions of paragraph 3 shall not affect the right of each of the States to levy according to its own law at tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.*

**51.** In Para No. 5 of the aforesaid Article, first of all provides that gains from alienation of any property which in this case the shares which are not covered from Para Nos. 1 to 4 shall be taxable in the state of an

alienated resident which here in this case would be Netherland company. However, two exceptions have been provided in the said para:

- *The first is that gains from alienation of shares issued by company resident in other state which here in this case to the Indian Company, i.e., NOVATEUR INDIA whose shares form part of more than 10% in the capital stock of its company which here in this case was 48.659% shares held by Netherland company and the alienation of shares by way of capital reduction was is in excess of 10%, then the said part of the para provides that the same may be taxed in that other state, i.e., in India if the alienation takes places to its resident of that other state which means if the shares have been sold to a resident of India, then capital gains shall be chargeable to tax in India.*
- *Secondly, such gains shall be taxable in state of an alienator is a resident, i.e., Netherland, if gains are realized in the course of a corporate organisation, re-organisation, amalgamation, division or similar transaction when the buyer or seller own at least 10% of the capital. The second exception again gives right to the resident state only if the alienation of shares is due to conditions mentioned therein, i.e. corporate organisation, re-organisation, amalgamation, division or similar transaction.*

**52.** What is to be seen here in this case is that, which of these two exceptions are applicable in the case of the present assessee. Capital reduction by way of an order of the NCLT cannot be reckoned as alienation of shares in the course of corporate organization, re-organization, amalgamation, division or similar transaction. What has been canvassed before us is that, the first exception is only applicable if

the alienation takes place to the resident of that other state i.e. India, if it is sold to a resident of India, i.e., other than NOVATEUR INDIA. Such a plea in our opinion cannot be accepted, because exception for taxability of capital gains in the state of resident which has been carved out, clearly envisages that if alienation of shares are more than 10% of the Indian company and such an alienation takes place to an Indian resident, then resident based taxation cannot be applied if the Netherland company had more than 10% interest in the Indian Company. Undisputedly, the alienation took place to resident of India and therefore, it cannot be held that only if some other Indian company or Indian resident could have bought shares, then only this exception would apply is too farfetched understanding of the Para No. 5. In any case, the alienation of shares is by way of capital reduction and in lieu of such capital reduction where Indian company has paid consideration for alienation of such shares which it has bought back and had paid a compensation, is nothing but a consideration of transfer of shares and therefore, it tantamount to gain on alienation of shares taxable under the head 'capital gain' in India. As stated above, second exception is not applicable.

**53.** Another contention of the assessee before us is that it falls under the first limb which categorically provides that in case of alienation of shares, resident country had right to tax the capital gain i.e. Netherland. Though under Article 13(5), it is a resident based taxation, however, if the exception has been carved out if the threshold of alienation of shares which forms part of 10% interest in the capital stock of Indian Company is present, then resident based taxation is shifted to source based taxation and the source country i.e. India has right to tax under DTAA. Accordingly, this ground raised by the assessee is dismissed.

**54.** With regard to Ground No. 6, Assessing Officer computed surcharge and cess on the rate of tax for dividend (ie, 10%) provided in the tax treaty in the computation sheet to final assessment order. Ld. AR of the assessee submitted that the rate of tax on dividend (ie, 10%) provided under the tax treaty is inclusive of surcharge and cess. Accordingly, the assessee requests to direct the Assessing Officer for not levying the surcharge and cess on the aforesaid rate of 10% provided under the tax treaty in view of the settled position. Ld. AR relied on the decision of Mumbai Bench of the Tribunal in the case of Sunil V. Motiani v. ITO [ITA No. 276/Mum/2012) (Mumbai ITAT).

**55.** On the other hand, Ld.DR relied on the order of the Authorities below.

**56.** Considered the rival submissions and material placed on record, we observe that in the case of Sunil V. Motiani v. Income Tax Officer (supra) the Coordinate Bench held as under: -

*"5. We have perused the records and considered the matter carefully. There is no dispute that the assessee is a non resident based in UAE. There is also no dispute that the assessee had received gross interest of Rs.7,55,187/- from the Indian firms in which he was a partner. The interest income is no doubt taxable as the same had arisen from the sources in India. However there is Double Taxation Avoidance Agreement (DTAA) between India and UAE and, therefore, tax has to be computed under the provisions of DTAA which is beneficial to the assessee. There are specific Articles in DTAA dealing with taxation of income under different heads. The business profit is governed by Article-7 whereas interest income by Article-11. Under para-7 of Article-7 where business profit includes items of income which are dealt with separately in any other Article of the agreement, provisions of those Articles should not be affected by the provisions of this Article. In other words, in case there is provision for dealing with a particular type of income, such type of income has to be dealt with by those provisions. Therefore, though interest income may have been assessed as business income, there being specific Article to deal with interest income i.e. Article-11, taxation of interest will be governed by the said Article-11. Secondly interest income may be taxed in contracting State in which it arises, according to law of that State but if the recipient is beneficial owner of interest, tax so charged shall not exceed 5% of gross interest if the interest is received from bank and in other cases 12.5% of gross amount of interest. In this case, the assessee is the beneficial owner of interest and tax charged cannot exceed 12.5% of gross interest. Tax has been defined in Article-2(2)(b) as per which income tax included surcharge. Therefore, tax*

*referred to in Article 11(2) @ 12.5% also includes surcharge. Further, nature of education cess and surcharge being same as held by the Tribunal in the case of DIC Asia Pacific Pte Ltd.(supra), in our view education cess and surcharge cannot be levied separately and will be included in tax rate of 12.5%. The judgment of Hon'ble High Court of Uttarakhand in the case of Arthusa Offshore Co. (supra), is not applicable to the facts of the present case as the Hon'ble High Court was concerned with taxability of income under Article 14(2) of the DTA between India and USA. The Hon'ble High Court was not concerned with interpretation of tax payable on interest income under DTAA. The judgment of AAR in the case of Airports Authority of India, IN RE (supra), is also distinguishable as in that the court was concerned with taxability of business income and it was held that under Article 5(3) of DTAA with USA, preparatory and auxiliary type of work was excluded from the purview of PE and therefore, there being no PE it was held that income from software maintenance was liable to be taxed in India. The high Court was not concerned with taxability of interest income as per the treaty.*

*5.1 In view of the fore-going discussion, we hold that tax payable @ 12.5% under Article 11(2) of DTAA is inclusive of surcharge and education cess. We, therefore, set aside the order of CIT(A) and allow the claim of the assessee."*

**57.** Respectfully following the above said decision, we direct the Assessing Officer to follow the ratio as laid down in the above judgment, accordingly, we direct the Assessing Officer to levy only the applicable rate of tax as per the treaty without additional surcharge or cess since the applicable tax is inclusive of surcharge and education cess. Accordingly, this ground of appeal is allowed.

**58.** With regard to Ground No. 7 which is relating to initiation of penalty proceedings u/s. 270A of the Act. Ld. AR of the assessee prays to direct the Assessing Officer to drop the penalty proceedings under section 270A of the Act since the assessee has not under reported any income for the year under consideration.

**59.** We observe that this ground is premature at this stage for adjudication. Accordingly, this ground of appeal is dismissed.

**60.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 13<sup>th</sup> October, 2023.

Sd/-  
**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 13.10.2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER  
(Asstt. Registrar)  
**ITAT, Mum**