

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI
BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.1942/Del/2021
(ASSESSMENT YEAR 2019-20)

| | | |
|--|--|---------------------------|
| Sennheiser Electronics India Private Limited 104, ABC, Time Tower, Sector-28, M. G. Road, Gurgaon -122002 PAN No.AAKCS4629Q | | Circle - 4 (1) Gurgaon |
| (Appellant) | | (Respondent) |

| | |
|---------------|-------------------------------|
| Appellant by | Ms. Poonam Ahuja, Advocate |
| Respondent by | Sh. Sanjay Kumar, Sr. DR |

| | |
|--------------------------|------------|
| Date of Hearing | 16/11/2023 |
| Date of Pronouncement | 28/11/2023 |

ORDER

PER M. BALAGANESH, AM:

This appeal of the Assessee arises out of the order of the CIT(A), National Faceless Appeal Centre, Delhi, [hereinafter referred to as [NFAC] in Appeal No.CIT(A),Gurgaon-1/10181/2020-21, dated 22/07/2020 against the order passed by Central Processing Unit, Bengaluru u/s 143(1) of the Income Tax

Act (hereinafter referred to as 'the Act') on 22/07/2020 for the Assessment Year 2019-20.

2. Though the assessee has raised several grounds of appeal before us, the only effective issue to be decided in this appeal is as to whether the NFAC was justified in not granting refund of the Dividend Distribution Tax (DDT) in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of sales and distribution of headphones, microphones, monitoring systems, tour guide systems and aviation headsets. It imports goods from Sennheiser group companies for reselling through its distributors in India. The return of income for the assessment year 2019-20 was filed by the assessee company on 27.11.2019 which was later revised on 09.03.2020 declaring total income of Rs.3,77,00,470/-.

5. During the year under consideration the assessee distributed dividends to its share holders (Senniheiser Global Operations GMBH, Germany and Sennheiser Electronic GMBH & Co. KG,

Germany) and paid DDT on distribution of dividends under section 115-O of the Act as under:-

| Particulars | Total (Rs.) | Dividends to share holders | |
|--|-------------|--|---|
| | | Sennheiser Global Operations GMBH, Germany-Rs. | Sennheiser Electronic GMBH & Co. KG, Germany -Rs. |
| Profits earmarked for distribution | 42,000,000 | 41,958,000 | 42,000 |
| DDT paid on distribution [@15% on grossing up basis plus 12% surcharge and 4% health and education cess] | 8,633,224 | | |
| Taxation in terms of DTAA(maximum 10% of dividends) | 4,200,000 | | |
| Excess payment which is refundable | 4,433,224 | | |

6. In this appeal, the assessee is now seeking refund of Rs.44,33,224/- on the ground that it has paid excess DDT. We find that this issue is no longer res integra in view of the recent Special Bench decision of Mumbai Tribunal in the case of DCIT Vs. Total Oil India Private Limited reported in 149 taxmann.com 332 wherein it was held as under :-

“83. For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts

Additional Income-tax (Tax on Distributed Profits) referred to in sec.115-0 of the Act, such additional income tax payable by the domestic company shall be at the rate mentioned in section 115-O of the Act and not at the rate of tax applicable to the non-resident shareholders(s) as specified in the relevant DTAA with reference to such dividend income. Nevertheless, we are conscious of the sovereign's prerogative to extend the treaty protection to domestic companies paying dividend distribution tax through the mechanism of DTAAS. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered, accordingly.”

8. Respectfully following the aforesaid decision, the grounds raised by the assessee are hereby dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 28.11.2023.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Dated: 28/11/2023

Neha, Sr. P.S.

Copy forwarded to:

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

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI