

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 2109/Mum/2023 (A.Y. 2019-20)

ACIT-2(2)(1) Room No. 545 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Mahindra & Mahindra Ltd. Gateway Building Apollo Bunder Mumbai-400001. PAN : AAACM3025E
(Appellant)		(Respondent)

C.O. No. 114/Mum/2023 (A.Y. 2019-20)

M/s. Mahindra & Mahindra Ltd. Gateway Building Apollo Bunder Mumbai-400001. PAN : AAACM3025E	Vs.	ACIT-2(2)(1) Room No. 545 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Shri H.P. Mahajani
Department by	Smt. Mahita Nair
Date of Hearing	20.12.2023
Date of Pronouncement	20.12.2023

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 31.3.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2019-20. The Revenue is aggrieved by the decision of the learned CIT(A)

(a) in granting relief in respect of the interest charged under section 115P of the I.T. Act towards late payment of Dividend Distribution Tax (DDT)

and

(b) in granting refund of Dividend Distribution Tax (DDT) paid by the assessee.

The assessee has filed cross objection supporting the decision of the learned CIT(A) on the above two issues. The assessee has also raised a legal ground contending that the intimation passed in respect of Dividend Distribution Tax is bad in law.

2. Facts relating to the case are stated in brief. The assessee has filed its return of income for A.Y. 2019-20 on 26.7.2020. The assessee has also declared dividend and paid Dividend Distribution Tax under section 115-O of the Act. The return of income of the assessee was processed under section 143(1) of the Act. The DDT has to be paid within 14 days from the date of declaration of dividend. In the return of income, the assessee declared date of distribution of dividend as 13.7.2018, while it has paid DDT on 20-08-2018. Since the payment of DDT was after expiry of prescribed period of 14 days, the CPC levied interest of Rs.1,83,76,886/- under section 115P of the Act.

3. The assessee challenged the above said levy of interest by filing the appeal before the learned CIT(A). It was submitted that the actual date of declaration of dividend was 7.8.2018 only and it was erroneously mentioned as 13.7.2018 in the return of income. It was submitted that the assessee has paid DDT on 20.8.2018 i.e. within the 14 days from the date of declaration of dividend as prescribed under section 115-O(3) of the Act. Accordingly it was contended before the learned CIT(A) that the assessee is not liable to pay any interest under section 115P of the Act.

4. The Ld CIT(A) noticed that the dividend was declared in the annual general meeting, which was held on 7.8.2018. Accordingly he held that the applicability of section 115P is to be seen with respect to 7.8.2018. In effect, the Ld CIT(A) held that no interest shall be chargeable, since the DDT was paid within 14 days. The Revenue is aggrieved.

5. The assessee has also raised one more issue before the learned CIT(A). It was submitted that as per provisions of section 115-O of the Act, dividend received from the subsidiaries have to be reduced from the amount of dividend declared and DDT has to be paid on the net amount so arrived. It was submitted that the assessee had received dividend from one of its subsidiaries named Mahindra Overseas Co. (Mauritius) Ltd. amounting to Rs. 203,55,94,100/-. However, while computing dividend distribution tax payable by the assessee, the assessee reduced a sum of Rs. 200 crores only instead of Rs.203.55 crores. Hence, there was excess payment of dividend distribution tax. The assessee claimed refund of excess payment before the learned CIT(A). The first appellate authority accepted the submissions of the assessee and directed the Assessing Officer to allow correct amount of credit of dividend distribution from the subsidiaries. In effect, the Ld CIT(A) has held that the assessee has paid DDT in excess. The Revenue is aggrieved.

6. We heard the parties and perused the record. With regard to the first issue, we noticed that the dividend was declared in the annual general meeting held on 7.8.2018. The Learned AR submitted that the assessee has wrongly taken the 'date of book closure' as the 'date of declaration of dividend' and accordingly filled the return of income. However, the fact would remain the dividend was declared in the AGM, which was held on 7.8.2018 and hence the said date only should be recognized for the purpose of sec. 115O of the Act. Since the DDT has been paid on 20.8.2018 i.e. within the 14 days from the date of declaration, being the period prescribed under section 115-O(3) of the Act, interest u/s 115P is not chargeable upon

the assessee for this year. Accordingly, we do not find any infirmity in the decision rendered by the learned CIT(A) on this issue.

7. With regard to the second issue, the submission of the assessee is that the dividend received from its subsidiary Mahindra Overseas Co. (Mauritius) Ltd. is Rs. 203.55 crores, while it has deducted only Rs. 200 crores from the dividend declared by it from the purpose of computing DDT. Thus, it is a case of computational error which needs to be rectified. Accordingly the learned CIT(A) restored this issue to the file of the Assessing Officer for computing correct amount of tax. It is well settled proposition of law that the income tax department can collect any tax only under the authority of law. Hence, the revenue is not entitled to retain any payment made inadvertently in excess by the assessee and the said excess payment is liable to be refunded. Accordingly, we are of the view that the learned CIT(A) was justified in directing the Assessing Officer to compute correct amount of DDT payable by the assessee, meaning the excess should be refunded.

8. The assessee has raised a legal issue challenging the validity of adjustment made in respect of DDT in the intimation issued u/s 143(1) of the Act. Since the assessee has been granted relief on merits, this legal issue is rendered academic in nature. Accordingly, we do not find it necessary to adjudicate it.

9. In the result, appeal filed by the Revenue and cross objection filed by the assessee are dismissed.

Order pronounced on 20.12.2023.

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 20/12/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai