

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "D", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

	I.T.A. No. 3118/DEL/2023	
	A.Y.: 2021-22	
HUHTAVEFA B.V Wegallan 8, 2132 Jc Hoofddorp, FOREIGN Netherlands. (PAN: AACCH1152R)	VS	ACIT, CIRCLE INT. TAX 2(1)(1), NEW DELHI -110002
(ASSESSEE)		(RESPONDENT)

Assessee by : Shri Malay Kalavadia, Adv.
Department by : Shri Vijay B. Vasanta, CIT-DR

Date of hearing : **06.02.2024**
Date of pronouncement : **08.02.2024**

ORDER

PER SHAMIM YAHYA, AM :

This appeal by the assessee for the assessment year 2021-22 is directed against the Order dated 13.09.2023 of Assessing Officer/ACIT, Circle Int. Tax. 2(1)(1), New Delhi passed under section 143(3)/144C(13) of the Income Tax Act, 1961 on the following Grounds:-

"Based on the facts and circumstances of the case and in law, Appellant respectfully craves leave to prefer an appeal

against the order passed by Assistant Commissioner of Income Tax, Circle INT. TAX. 2(1)(1) -- New Delhi ("the learned AO"), under section 143(3) r.w.s 144C(13) of Income-tax Act, 1961 ('the Act') in pursuance to directions issued by the Dispute Resolution Panel - 1 New Delhi ("the DRP") on the following grounds:

Ground No. 1-Ground of appeal pertaining to favorable benefit of lower tax rate of 5% to dividend income

1.1 On the facts and in circumstances of the case and in law, the learned AO in pursuance to directions issued by Ld. DRP has erred in law in denying benefit of lower tax rate of 5% on dividend income, earned by the Appellant from Huhtamaki India Limited under India-Netherland Double Tax Avoidance Agreement (DTAA") read with protocol in DTAA.

1.2 On facts and circumstance of the case and in law, learned AO in pursuance to directions issued by Ld. DRP erred in relying upon Circular 3 of 2022 to reach to the conclusion that benefit of Most-Favored-Nations ('MFN') clause in India- Netherland DTAA can be invoked only when a separate notification is issued by the Government of India.

1.3 On facts and circumstance of the case and in law, the learned AO in pursuance to directions issued by Ld. DRP erred in not applying lower rate of 5% on dividend income on application of MEN clause contained in India-Netherland DTAA read with India - Slovenia DTAA or India - Lithuania DTAA or India - Columbia DTAA.

1.4 On the facts and in circumstances of the case and in law, the learned AO in pursuance to directions issued by Ld. DRP has erred in not following decisions delivered by the Hon'ble jurisdictional High Court and Hon'ble Pune Tribunal on the issue arising in the Appellant's case.

Ground No. 2 - Charging tax at 15% plus surcharge and cess on assessed income in computation sheet in contrary of levy of tax at 10% in accordance with the assessment order

2. On the facts and in circumstances of the case and law, the learned AO has erred to charging tax at 15% plus surcharge and cess on assessed income in computation sheet as against computing tax at 10% as held in the assessment order as per Article 13 of the DTAA of India-Netherlands.

Ground No. 3 - Levy of interest under section 234B and section 234C of the Act

3. On the facts and in circumstances of the case and law, the learned AO has erred in charging interest under section 234A and 234B of the Act.

Ground No. 4 - Initiating penalty proceedings under section 270A of the Act

4. On the facts and in circumstances of the case and law, the learned AO has erred in initiating penalty under section

270A of the Act when returned income and assessed income of the Appellant has remained the same.

The appellant craves the leave to add, amend, alter and/or delete all or any grounds of appeal, before or at the time of hearing."

2. Briefly stated facts are that assessee filed its original return of income for AY 2021-22 on 15.03.2022 which was declaring total income at Rs. 15,16,61,991/-. The case of the assessee was selected under "CASS" for Scrutiny. Notice u/s. 143(2) of the Act dated 27.6.2022 was issued and duly served upon assessee electronically. Further, notice u/s. 142(1) of the Act, along with questionnaire were issued during assessment proceedings through the assessment module of ITBA and the assessee submitted its reply electronically. The assessee company is a tax resident of Netherlands. The assessee company holds 67.73% stake in Huhtamaki India Limited (HIL) which is a company listed on BSE and NSE. For the year under consideration, the Assessee has received an amount of Rs. 15,56,61,991/- from HIL, however, offered the same at rate of 5% tax by taking benefit of the MFN clause of India-Solvenia DTAA instead of 10% taxation rate as present in India-Netherlands DTAA. AO observed that for the applicability of the provisions of any other DTAA into the provisions of an existing DTAA vide the MFN clause, there needs to be a specific notification in place, vide which such provisions may be invoked. However, in the present case there is no specific notification for the applicability of the MFN benefits into the India Netherlands DTAA.

Hence, the AO rejected the contention of the assessee and proposed that the dividend received by the assessee from the Indian entity, Huhtamaki India Limited be chargeable to tax @10% as per the India-Netherlands DTAA. Upon assessee's objection the Ld. DRP upheld the AO's order.

3. Against the above order of the AO, Assessee is in appeal before us. We have heard both the parties and perused the records.

4. As regards Ground No. 1 is concerned, at the time of hearing, Ld. AR conceded that Ground No.1 is in favour of the Revenue because without a separate notification, applicability of the MFN clause and benefit of restricted scope of source taxation in relation to the income on Dividend cannot be allowed to the assessee. As there is no specific notification for the applicability of the MFN benefits into the India Netherlands DTAA. Ld. DR has no objection. In view of the above factual matrix, the Ground No. 1 is dismissed.

5. Apropos Ground No. 2 is concerned, Ld. AR has submitted that AO has erred to charge tax @15% plus surcharge and cess on assessed income in computation sheet as against computing tax at 10% as held in the assessment order as per Article 13 of the DTAA of India-Netherlands. Therefore, he requested to set aside the issue to the file of the AO for verification and decide the same in accordance with law. Ld. DR has no objection. In view of the aforesaid facts and circumstances, we deem it fit and proper to restore the matter for verification purpose and decide

the same in accordance with law. Needless to say that the assessee should be given an opportunity of being heard.

6. As regards Ground No. 3 relating to levy of interest under section 234A & 234B of the Act is concerned, it is consequential in nature, hence, AO is directed to re-compute the interest u/s. 234A & 234B, if any, afresh in accordance with law.

7. As regards Ground No. 4 relating to initiating of penalty proceedings under section 270A of the Act is concerned, it is premature, hence, the same deserve to be dismissed at this juncture.

In the result, the Assessee's Appeal is partly allowed for statistical purposes.

Order pronounced on 08/2/2024.

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBhatnagar

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar