

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2505/MUM/2022  
(Assessment Year: 2018-2019)**

**Assistant Commissioner of Income-tax-  
1(2)(1), Mumbai,**  
Room No. 535, Aaykar Bhavan, M.K. Road,  
Mumbai - 400020

..... **Appellant**

**Blue Dart Express Limited,**  
Blue Dart Centre, Sahar Airport Road,  
Andheri (East), Mumbai - 400099  
[PAN: AAACB0446L]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Ashok Kumar Ambastha  
For the Respondent/Assessee : Ms. Richa Sachdeva

**Date**

Conclusion of hearing : 12.03.2024  
Pronouncement of order : 26.03.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 28/07/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 19/03/2021, passed under Section 143(3) read with Sections 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised the following grounds of appeal:

- "1. *On the facts and in the circumstances of the case and in law the Id. CIT(Appeals) in NFAC erred in holding that the dividend paid by the assessee is income in the hands of the share-holders in view of the provisions of section 10(34) r.w.s. 115(O) of the Act.*
2. *On the facts and in the circumstances of the case and in law the Id. CIT(Appeals) in NFAC erred in holding that the Dividend Distribution Tax (DDT) paid by the assessee on dividend distributed is tax paid on the income of share-holders from such dividend.*
3. *On the facts and in the circumstances of the case and in law the Id. CIT(Appeals) in NFAC in holding that the Dividend Distribution Tax (DDT) paid by the assessee in relation to Foreign share-holders is payable @ 10% as per Treaty and not @ 20% as per Act.*
4. *Whether on the facts of case and in law dividend paid by the assessee company to its non-resident shareholders is income in hand of such shareholders in view of section 10(34) read with 115-O of the Act."*

3. The relevant facts in brief are that during the relevant previous year the Assessee had paid dividend of INR 35,59,19,010/- to its shareholder which included DHL Express Singapore (Pte) Ltd. [for short '**DHL Singapore**'] holding 75% equity shares in the Assessee Company. Out of total DDT of INR 7,24,56,736/- paid by the Assessee under Section 115-O of the Act at average rate of 20.36%, DDT amounting to INR 5,43,42,552/- was paid in respect of dividend paid to DHL Singapore. The Assessee claimed that DHL Singapore was tax resident of Singapore, and therefore, DDT on dividend paid to DHL Singapore was payable at the rate of 10% being the rate prescribed in Article 10 of Double Taxation Avoidance Agreement between India and Singapore. Since the

Assessee had paid DDT at effective rate of 20.36%. The Assessee was entitled to claim refund of DDT amount paid in excess of the rate of 10% specified in Article 10 of Double Taxation Avoidance Agreement between India and Singapore. The Assessing Officer rejected the aforesaid claim of refund, whereas the CIT(A) overturned the decision of the Assessing Officer and allowed the claim of refund of DDT in excess of 10%. The Revenue is now in appeal before the Tribunal being aggrieved by the order of the CIT(A) accepting the Assessee's claim for refund of Dividend Distribution Tax (DDT) paid by the Assessee in excess of the rate of 10% prescribed by Article 10 of the Double Taxation Avoidance Agreement between India and Singapore [*i.e. the country of tax residence of the dividend recipient - DHL Express Singapore (Pte) Ltd.*].

4. During the course of hearing, both the sides agreed that the issue raised in the present appeal stands decided against the Assessee and in favour of the Revenue by the decision of the Mumbai Bench of the Tribunal in the case of the Assessee [**ITA No. 1370-1372/Mum/2022, dated 15/06/2023**] for the Assessment Year 2015-16, 2016-17 and 2017-18. However, it was submitted on behalf of the Assessee that the Assessee has not accepted the aforesaid decision and has preferred appeal before the jurisdictional high court which is pending adjudication.
5. We have perused the above decision of the Tribunal wherein the Tribunal had overturned the decision of CIT(A) and rejected identical claim for refund DDT made by the Assessee for the Assessment Years 2015-16, 2016-17 & 2017-18 by following the decision of the Special Bench of the Tribunal in the case of **Deputy**

**Commissioner of Income Tax Circle 11(3)(1), Mumbai Vs. Total Oil India Pvt. Ltd. [ITA No. 6997/Mum/2019, dated 20/04/2023.**

The relevant extract of the above decision of the Tribunal [ITA No. 1370-1372/Mum/2022, dated 15/06/2023] in the case of the Assessee reads as under:

*"9. We have heard the Ld. DR submissions and perusal the material on record. The Ld. DR contentions are that the CIT(A) has erred in directing the payment of refund of excess DDT to the assessee, as the dividend income is taxable in the hands of the foreign share holders and the DDT is payable @ 20% but the CIT(A) observed that the rate of DDT should be restricted to 10% as per the India-Singapore Tax Treaty. Whereas the assessee has filed submissions on this disputed issue considering the special bench decision of DCIT Vs Total Oil India Pvt. Ltd & others (Supra) at Para 2.8 & 2.9 of the submissions as under:*

*2.48 In a recent decision of the Special Bench in **Total Oil India (P.) (2023) 149 taxmann.com 332 (Mumbai Trib.) (SB)**, it was held that the DDT rate on dividends distributed to non-residents cannot be restricted to the rate of tax on dividends as specified in tax treaties. The Special Bench distinguished the Hon'ble Supreme Court's decision in Tata Tea (supra) on the grounds that the Hon'ble Supreme Court was not dealing with the nature of DDT as to whether it is tax on the company or a tax on the shareholder. It is submitted that Article 10 of the India-Singapore treaty only deals with tax on dividend income and is indifferent whether the tax on dividend is on the company declaring dividends or its shareholder receiving it. Accordingly, the Appellant submits that aforesaid decision in Tata Tea (supra) which held that tax u/s 115-0 is a tax on dividend and not profits of the domestic company holds significant relevance. Accordingly, with due respect, it is submitted that the decision of Special Bench does not lay down the correct principle of law and therefore needs reconsideration.*

*2.49 In light of the above, it is submitted that DDT on dividend declared and paid by the appellant to DHL Singapore is leviable at the rate of 10% as per the India-Singapore tax treaty. Accordingly, it is humbly submitted before your Honours that the order passed by the hon'ble CIT(A) in appellant's case for the year under consideration be upheld.*

*10. We find as per the synopsis chart filed, the assessee has highlighted on the facts that the assessee has paid the dividend distribution tax (DDT) at the rate of 20.36% under section 115-0 of the Act on dividend distributed to DHL Express Singapore Pte Ltd. whereas M/s DHL Express Singapore Pte Ltd. is tax resident of Singapore and entitled to claim of benefit under India- Singapore Treaty. The assessee has also made an additional claim of refund DDT paid in excess Article 10 at the rate of 10% of India-Singapore Treaty which was rejected by the Assessing Officer. Further the DDT is a tax on dividend income of share holders and as per Article 10 of the Singapore DTTA Treaty tax rate is 10%. Since the rate of tax of 10% under Article 10 of India-Singapore Treaty is beneficial vis-à-vis the rate of 20.36% under section 115O of the IT Act which DDT has been currently discharged, the DDT rate should be restricted to 10% and the refund of excess DDT is paid is due to the assessee. At this juncture,, we considered it appropriate to considered the observations of the Special Bench decision of DCIT Vs Total oil India Pvt. Ltd & others (Supra) at Para 82 to 84 of the order read as under:*

*82. We are of the view that the above exposition of law is correct and we agree with the same. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT u/s 115-0 of the Act.*

*83. For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company 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 company shall be at the rate mentioned in Section 115 0 of the Act and not at the*

rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend. 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.

84. We wish to place on record our appreciation for the assistance provided by the Id, counsels for the parties and the interveners and the Id. DR for the assistance provided to the Bench in deciding the issue referred to the Special Bench

84. These appeals/COs are restored to the respective Division for deciding the issues raised in the respective appeals, accordingly.

Therefore, we considered the ratio special bench and as the fact follow jurisdictional precedence and set aside the order of the CIT(A) on this disputed issue relied on the ratio of judicial nations and observed that the dividend dispute paid by the assessee company to its non residential shareholder dividend distribution tax, distribution tax mentioning in 1150 not on the rate of tax applicable to non-residential shareholder as per the relevant DTA and accordingly, we set aside the order of the CIT(A) and allow the ground of appeal as in favor of the revenue.

11. We considering the facts, circumstances, submissions and ratio of judicial decisions and follow the judicial precedence Special bench decision and observe that the Dividend Distribution Tax (DDT) on dividend declared and paid by the Assessee to DHL Express Singapore Pte Limited, being a non resident share holder and the dividend distribution tax(DDT) shall be at the rate mentioned in section 115(0) of the Act is applicable and not at the rate of tax applicable to nonresident share holders as specified in the relevant DTAA on such dividend income. Accordingly, we set-aside the order of the CIT(A) on this disputed issue and restore the order of the A.O and we allow the grounds of appeal in favour of the Revenue.

*12. In the result, the appeal filed by the revenue is allowed.”  
(Emphasis Supplied)*

6. Since both the sides have agreed that the facts and circumstances prevailing in the Assessment Year 2018-19 are identical to the Assessment Years 2015-16, 2016-17 & 2017-18, respectfully following the above decision of the Tribunal, we hold that the DDT on dividend declared and paid by the Assessee to DHL Express Singapore Pte Limited shall be subjected to tax at the rate specified in Section 115O of the Act and not at the rate of 10% prescribed in Article 10 of the Double Taxation Avoidance Agreement between India and Singapore. Accordingly, the order passed by the CIT(A) granting refund of DDT, being contrary to the decision of the Special Bench of the Tribunal in the case of Total Oil India Pvt. Ltd (supra), is set aside and claim of refund of DDT raised by the Assessee is rejected.
7. In result, the present appeal preferred by the Revenue is allowed.

Order pronounced on 26.03.2024.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 26.03.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai