

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Pradip Kumar Choubey, Judicial Member

I.T.A. Nos.338 to 341/KOL/2023

Assessment Years: 2016-17 to 2019-20

Philips India Ltd
(PAN: AABCP9487A)

.....

Appellant

Vs.

Asstt. Commissioner of Income Tax,
Circle-12(2), Kolkata.

.....

Respondent

Appearances by:

Shri Vishal Jain AR appeared for Appellant.

Shri P. P. Barman, Addl. CIT, Sr. DR appeared for Respondent.

Date of concluding the hearing : 03.07.2024

Date of pronouncing the order : 08.07.2024

ORDER

Per Manish Borad, Accountant Member:

All these captioned appeals filed by the assessee pertaining to the Assessment Years (in short “AY”) 2016-17 to 2019-20 are directed against the separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Ld. Commissioner of Income-tax, Appeal, National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 10.02.2023 arising out of the assessment order u/s 237 of the Act by ACIT, Circle-12(2), Kolkata dated 26.06.2019 (for AYs 2016-17, 2017-18 & 2019-20), 28.06.2019 (for AY 2018-19) respectively. Since grounds are common and facts are identical, except variance in amount, we dispose of all the appeals by this consolidated order

taking the appeal for AY 2016-17 as the lead case and the result of which will apply mutatis mutandi to all other remaining appeals.

2. Grounds of appeal raised by the assessee for AY 2016-17 read as under:

"1. That on the facts and circumstances of the case, the National Faceless Appeal Centre, Delhi [the Ld. CIT(A)] erred in rejecting the claim of refund of excess Dividend Distribution Tax ('DDT') paid by the Appellant amounting to Rs. 2,54,74,925.

2. That on the facts of the case and in law, the Ld. CIT(A) erred in rejecting the contentions of the Appellant that the rate of DDT payable by the Appellant on dividend paid to its shareholder namely Koninklijke Philips N.V., which is a tax resident of the Netherlands, should be 5% as per the Double Taxation Avoidance Agreement between India and the Netherlands ('the DTAA').

3. That on the facts and circumstances of the case, the Ld. CIT(A) erred in placing reliance on the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT [2010] 194 Taxman 203/328 ITR 81 which has been reversed by the Hon'ble Supreme Court vide order dated 8 May 2017 and that the reliance on the aforesaid decision by the Ld. CIT(A) is wholly misplaced.

4. That on the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the decision of Hon'ble Supreme Court in case of Tata Tea Co. Ltd 398 ITR 260 (SC) which held that dividend distributed by a company is not impressed with the character of its own income implying that it is an income in the hands of shareholder and thus the Ld. CIT(A) erred in not appreciating that the DOT rate ought to be equal to the rate as applicable in the hands of shareholder.

5. That on the facts of the case and in law, the Ld. CIT(A) erred in holding that both the Appellant and the shareholder have not been subjected to tax in India on dividend income by not appreciating provisions of the Act and the intention behind the enactment.

6. That on the facts and circumstances of the case, the Ld. CIT(A) erred in holding that the DTAA was not applicable in the current scenario as the dividend is exempt in the hands of shareholder in India.

7. That on the facts and circumstances of the case, the Ld. CIT(A) erred in rejecting the memorandum to Finance Act 2020 which demonstrates the legislative intent of introducing DDT.

8. That on the facts and circumstances of the case, consequential interest u/s 244A of the Income Tax Act, 1961 be allowed to the Appellant.

9. The Appellant craves leave to add to and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal."

3. From the perusal of the above grounds, we find that the common grievance of the assessee is that it is entitled to refund of excess Dividend Distribution Tax (DDT) allegedly paid by it to its shareholder namely, Koninklijke Philips N.V.. In the grounds it is also stated that since the shareholder namely, Koninklijke Philips N.V is a tax resident of Netherlands and the tax rate is 5% as per DTAA (Double Taxation Avoidance Agreement) between India and the Netherlands. DDT is payable @ 5% only on the dividend paid to the shareholder namely, Koninklijke Philips N.V. as against the DDT rate prescribed u/s. 115-O of the Act.

4. At the outset, Ld. Counsel for the assessee was fair enough to accept that the similar issue has already been dealt by this tribunal in the case of *Exide Industries Ltd. ITA No. 206/Kol/2019 & C.O.57/Kol/2019 dated 06.09.2023* and also in the case of *Britannia Industries Ltd. in ITA No. 2644/Kol/2018 & CO. No. 9/Kol/2020 dated 27.10.2023* and this tribunal has followed the ratio laid down by the Hon'ble Special Bench of this Tribunal in the case of *DCIT Vs. Tata Oil India (P) Ltd., ITA No. 6997/Mum/2019 & Ors. dated 20.04.2023*. He further contended that the question of law on this issue has already been admitted by the Hon'ble jurisdictional High Court so all these appeals may be adjourned *sine die*. We, however, fail to find any merit in this contention of adjourning the appeals *sine die* since the issue has already been decided by this Tribunal in a number of decisions following the decision of Special Bench cited supra and, therefore, we deem it proper to decide these appeals also and the assessee is at liberty to take further course of action in accordance with the law.

5. On the other hand, the Ld. DR vehemently argued supporting the order of lower authorities.

6. We have heard the rival contentions and perused the material available on record. We observe that assessee is a limited company and distributed the dividend to its shareholders. One of the shareholders of the assessee company namely Koninklijke Philips N.V is a tax resident of Netherlands and the tax rate applicable to it as per the DTAA between India and Netherlands is @ 5%. The ground raised by the assessee is that since DDT is payable on the dividend distributed to the shareholder, the DDTs should not exceed the tax rate applicable to such shareholders which in this case is 5%. On the basis of this ground it is claimed that since the assessee has paid the DDT at the normal rate u/s. 115-O of the Act it is entitled to the excess DDT paid by it on the dividend distributed to non-resident shareholder namely, Koninklijke Philips N.V. We however, fail to find any merit in this ground of appeal of the assessee since similar issue has already come up before this Tribunal in the case of *Exide Industries Ltd.* and *Britannia Industries Ltd.* (supra) and finding of this tribunal in the case of the *Exide Industries Ltd.* (supra) is reproduced as under:

“9. Now, we take the cross-objection and the only issue raised by the assessee relates to the rate of Dividend Distribution Tax (hereinafter referred to as 'DDT') paid by the respondent assessee on dividend distributed / paid to Chloride Eastern Limited (Singapore) which is claimed to have been restricted to 10 percent as per the provisions of Article 10(2) of the India-Singapore Tax Treaty (herein after referred to as Tax Treaty') instead of 16.995 percent at which the respondent Exide Industries Limited 6 assessee had paid the DDT as per the provision of section 115-0 of the Income-tax Act, 1961 (hereinafter referred to as the Act') and as such, the assessee would be eligible for refund under the provisions of section 237 of the Act read with the aforesaid Article of the relevant Tax Treaty for the previous year relevant to the assessment year 2014- 15.

10. From perusal of the above ground, we note that similar issue came up for consideration for Assessment Year 2015-16, where after placing reliance on the decision of the Hon'ble Special Bench of ITAT Mumbai in the case of DCIT vs. Total Oil India Private Limited in ITA No. 6997/Mum/2019 & Ors., dt. 20/04/2023, the issue was decided against the assessee observing as follows:-

“18. We have heard the rival contentions and perused the material placed before us. In the Cross Objection, the assessee has raised a ground that dividend distribution tax payable on the dividend distributed /paid to Chloride Eastern Limited, a foreign company and tax resident of Singapore, ought to have been charged only @ 10%

being the tax rate as per provisions of Article 10(2) of the India-Singapore Tax Treaty instead of 16.995% of the DDT rate provided under section 115-O of the Act. We notice that the assessee has deposited the dividend distribution tax @ 16.995% only but at the later stage, the claim has been made for restricting DDT rate at 10% based on India-Singapore Tax Treaty and refund has been claimed. Though detailed submission has been filed by the assessee but prima facie indicates that the decision referred by Id. Counsel for the assessee in its favour, is not applicable on the facts before us and are thus distinguishable. We, however, would like to peruse the question for consideration before the Hon'ble Special Bench, ITAT, Mumbai of this Tribunal in the case of Total Oil India Private Limited (supra), which reads as under:-

“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 section 115-O of the Income Tax Act, 1961 (in short ‘the Act’), whether such additional income- tax payable by the domestic company shall be at the rate mentioned in section 115-O of the Act or the rate of tax applicable to the non-resident shareholder(s) with reference to such dividend income”.

19. Thereafter in the decision of the Special Bench, judicial jurisprudence has been with and the conclusion of the decision reads as under:-

“83. For the reasons given 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-O 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 shareholder(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”.

20. After going through the decision of the Special Bench, we find that the issue raised by the assessee in its Cross Objection is similar to the issue dealt with by the Special Bench, wherein the matter was related to dividend distribution tax rate applicable to the dividend distributed/paid to a foreign company located at France and whether the DDT was leviable at the prescribed rate between India and France and the Hon'ble Special Bench held that where dividend is declared or distributed by domestic company to a nonresident holder, such additional income tax payable under section 115-O of the Income Tax Act 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 holder as specified in the relevant DDT with reference to such dividend income. Accordingly, respectfully placing reliance on the said decision of Special Bench, ITAT in the case of Total Oil India Pvt. Limited (supra) and the same being squarely applicable against the assessee on the issue raised in Cross Objection, we are inclined to hold that the assessee is liable to pay dividend distribution tax @ 16.995% on the dividend distributed/paid to non-resident namely Chloride Eastern Limited, a foreign company

and tax resident of Singapore. Thus Ground No. 1 of the Cross Objection filed by the assessee is dismissed.”

11. Before us, the Id. Counsel for the assessee failed to controvert this fact that the issue raised for Assessment Year 2014-15 is similar to Assessment Year 2015-16. Thus, consistent with the view taken therein, we dismiss this cross-objection filed by the assessee.”

7. Respectfully following the above decision and also considering the ratio laid down by the Hon’ble Special Bench in the case of *Tata Oil Industries Ltd.* (supra), we are of the considered view that section 115-O(i) of the Act clearly provides that in addition to the income tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividend (whether interim or otherwise) on or after the 1st day of April, 2003 but on or before 31st day of March, 2020 whether out of current or accumulated profit shall be charged to additional income tax (DDT) at the applicable rate. We note that in the above provision no distinction has been drawn with regard to the payee of the dividend distributed by the company, therefore, the assessee was required to pay the DDT as per the rate applicable for the year provided u/s. 115(O)(1) of the Act. Thus, no interference is called for in the finding of the Ld. CIT(A). Therefore, the appeal of the assessee is dismissed.

8. Since we have dismissed the appeal for the AY 2016-17, for the remaining AYs 2017-18 to 2019-20, sine the issue raised are common, our decision for AY 2016-17 shall apply *mutatis mutandis* to all the remaining appeals of the assessee.

9. In the result, all the appeals of the assessee are dismissed.

Order is pronounced in the open court on 8th July, 2024.

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Sd/-[Dr. Manish Borad]
Accountant Member

Dated: 8th July,2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Philips India Limited, 3rd Floor, tower A, DLF IT Park, 08 Block AF, Major Arterial Road, New Town (Rajarhat), Kolkata-700156.**
- 2. Respondent – ACIT, circle-12(2), Kolkata**
3. CIT(A), Kolkata
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata