

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : D : NEW DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2808/Del/2023  
Assessment Year: 2021-22

Standex Europe Besloten  
Vennootschap,  
Prins Bernhardplein 200,  
Amsterdam,  
Netherlands.

Vs ACIT,  
Circle-3(1)(2),  
International Taxation,  
New Delhi.

PAN: AAOCS7755F

(Appellant)

(Respondent)

Assessee by : Shri Sachin Mehta, CA  
Revenue by : Shri Sandeep Mishra, Sr.DR

Date of Hearing : 02.09.2024  
Date of Pronouncement : 06.09.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the final assessment order dated 08.08.2023 passed by the Asstt. Commissioner of Income Tax, International Taxation, Circle 3(1)(2), New Delhi (hereinafter referred to as the Ld. AO) u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The assessee's parent is headquartered in Salem, New Hampshire, USA and manufactures electronic components and assemblies for diverse industries, such as automotive, communications, housing, medical and aerospace. It had established a company in Netherlands (NL) in the year 2000 to act as an investment company for setting up subsidiaries worldwide. The assessee company filed its return of income for the assessment year 2021-22 on February 14, 2022 within the extended due date vide circular no 01/2022 dated January 11, 2022 declaring a total income of Rs.25,00,00,000/-. During the year under review, the assessee company received dividend from its wholly owned subsidiary, Standex Engraving India Private Limited (Standex India) of Rs 25,00,00,000/- on which taxes were deducted at source at the rate of 10.4% (Rs 2,60,00,000) in terms of article 10 (2) of the DTAA between India and NL. However, at the time of filing return of income, the assessee offered the said income to tax at the rate of 5% based on clause IV to the protocol to the DTAA between India & NL and the DTAA between India and Lithuania/Slovenia/Columbia. The assessee had no other India sourced income during the year. The AO passed a draft order on December 20, 2022 accepting the returned income. However, he taxed the said dividend income received at 10% instead of 5% as returned on the ground that the preconditions laid down in circular of the CBDT referred to in annexure I were not fulfilled. He also proposed to levy penalties under sections 271BA and 270 A of the Act.

3. The case of assessee is that AO erred in following the criteria laid down in circular no 3/2022 vide F.No.503/1/2021-FT&TR-1 dated 03.02.2022 issued by the Central Board of Direct Taxes (CBDT), thereby holding that (a) a separate notification was required to be issued by India, importing the benefits of a second treaty (in the instant case with Lithuania, Slovenia or Columbia) into the treaty with the first State (in the instant case, Netherlands-NL) before granting the benefits envisaged by clause IV to the protocol to the DTAA between India and NL (MFN status) and (b) the third state (in the instant case with Lithuania, Slovenia and Columbia) have to be OECD member states on the date of conclusion of their respective DTAA with India.

4. The DRP rejected the objections of the assessee for which the assessee is in appeal before us raising the following grounds:-

*“1. On the facts and circumstances of the case the learned DRP/assessing officer erred in taxing dividend income earned from Standex India to be taxed at 10% instead of 5% based on clause IV to the protocol to the Double Taxation Avoidance Agreement (DTAA) between India and Netherland and the DTAA's between India and Lithuania/Slovenia/Columbia.*

*2. On the facts and circumstances the learned DRP/assessing officer erred in rejecting MFN clause, between India and Netherland DTAA on the ground that the condition are not satisfied.*

*3. On the facts and circumstances the learned DRP/assessing officer erred in rejecting the rate of tax on dividend at 5% based on circular no 3/2022 dated 03/02/2022 which was much after the dividend declaration in the month of June 2020.*

4. *On the facts and circumstances the learned DRP/assessing officer erred in not appreciating the fact that the condition for claiming benefit of India and Netherland DTAA are fulfilled, as Standex B V holds more than 10% of shares in Standex India.*

5. *On the facts and circumstances of the case the learned DRP/assessing officer erred in not appreciating the fact that the conditions for deduction of tax at the rate 5% on dividend income received from Standex India are fully satisfied as per Article 10(2) of the DTAA between India and Netherland read with relevant protocol and Article 10(2) of DTAA between India and Lithuania.*

6. *On the facts and circumstances of the case the learned DRP/assessing officer erred in not appreciating the fact that the assessee is entitled to the benefit of DTAA entered between India and other country and the same will prevail notwithstanding that it is more beneficial to the assessee and double taxation benefit is deductible in Netherlands.*

7. *On the facts and circumstances of the case the learned DRP/assessing officer erred in not appreciating the fact that the lower rate of taxation of 5% on dividends envisaged in the DTAA between India and Slovenia would apply to the DTAA between India and Netherland from the date on which Slovenia became an OECD member country (July 21, 2010).*

*The assessee seeks leave to add to/to amend any of the foregoing grounds as and when necessary/at the time of hearing.”*

5. After hearing, the Id. AR could not defend the issues raised in the light of the judgement of the Hon’ble Supreme Court in the case of ***Assessing Officer (International Taxation) vs. Nestle SA, (2023) 155 taxmann.com 384 (SC)*** wherein the Hon’ble Supreme Court has held that Notification under section 90(1) is a necessary and a mandatory condition for a court, authority or tribunal to give effect to a DTAA or any protocol changing its terms or conditions, which has effect of altering existing provisions of law.

6. In the light of the aforesaid, no substance survives in the grounds. The appeal is dismissed.

Order pronounced in the open court on 06.09.2024.

Sd/-

Sd/-

(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 06<sup>th</sup> September, 2024

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi