

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.2541/Mum/2024
Assessment Year: 2018-19**

Yashvardhan Jatia Trust 18/20 M Floor Bhogilal Hargovindas Building H Dubash Road Fort, Mumbai-400001. PAN: AAATY 4137 A	Vs.	Assessing Officer, CPC, Bangalore
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anuj Kisnadwala
Revenue by : Dr. Kishor Dhule, CIT/DR

Date of Hearing : 05.08.2024
Date of Pronouncement : 21.10.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2018-19 is directed against the order dated 07.05.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

"1A. On the facts and circumstances of the case, the AO, CPC erred in taxing the entire dividend in excess of Rs. 10 Lacs amounting to Rs.40,16,301 u/s 115BBDA of the Act under the head income from other sources, which included dividend received on mutual funds of Rs. 26,19,399 which is exempt u/s 10(35) of the Act and not chargeable to tax.

1A.1 On the facts and circumstances of the case, the AO, CPC ought to have taxed only the dividend earned on equity shares of domestic companies in excess of Rs. 10 Lacs which amounted to Rs. 13,96,902. (Actual dividend received Rs. 23,96,902 less Rs.10,00,000) and excluded the dividend on mutual funds amounting to Rs.26,19,399.

1A.2 On the facts and circumstances of the case, the A), CPC ought to have followed the proposition of real & correct taxation as per the existing laws and not take any benefit of any ignorance of the law by appellant as laid down by the CBDT in its Circular no. 14(XL-35) dt. 11/04/1955 and upheld by the Hon'ble Bombay High court in the case of Balmukund Acharya vs. Deputy Commissioner of Income Tax [176 Taxman 316].

1.1 On the facts and in the circumstances of the case, the CIT(A) further erred in disposing off the various rectification applications and reminders filed before him by dismissing the same in a cryptic manner and holding that there was no mistake apparent on record.

1.2 On the facts and in the circumstances of the case, the CIT(A) ought to have directed the AO, CPC to exclude the dividend earned on mutual funds of Rs. 26,19,939/- out of the total dividend received by the appellant as the same was exempt u/s 10(35) of the Act. The CIT(A) grossly erred by causing prejudice to the assessee by taxing a non-taxable income and disposing off our appeal and rectification application on a flimsy ground.

1.3 On the facts and in the circumstances of the case, on the principles of equity the revenue cannot tax any income which is otherwise not taxable. (Refer decision of Delhi High Court in the case of PCIT vs Ansal Properties and Infrastructure Ltd. 460 ITR 341), held as under:

16. Besides this, in our view, it is more than well-established that merely because the assessee inadvertently offers a receipt for levy of tax, tax cannot be levied by the revenue if it is not otherwise constitute income of the assessee. Every receipt is not an income chargeable to tax under the provisions of the Act.”

2. Fact in brief is that assessee filed its return of income on 30.08.2018 in ITR-7 which is applicable to charitable trust claiming the entire dividend of Rs. 50,16,301/- as exempt u/s 10(38) of the Act. Subsequently, the assessee revised its return of income on 20.11.2018 in correct ITR-5 applicable to AOP. However, again the assessee claimed the entire dividend income of Rs. 50,16,301/- as exempt u/s 10(38) of the Act. The CPC has processed the return filed on 30.09.2019 and taxed entire dividend

income in excess of Rs. 10 lakhs amounting to Rs. 40,16,301/- twice once under income from business and again u/s 115BBDA of the Act. The assessee on realizing its mistake suo moto offered the dividend earned on equity shares above Rs. 10 lakhs to tax u/s 115BBDA of the Act. However, inadvertently assessee has also included dividend on mutual fund of Rs. 26,19,399/- which was actually exempt u/s 10(35) of the Act. The assessee filed rectification application before the CPC on 07.10.2019 which was rejected by the CPC on 25.11.2019. Therefore, the assessee filed appeal before the Id. CIT(A) against the rectification order u/s 154 of the Act. The Id. CIT(A) has rejected the appeal of the assessee holding that there was no mistake apparent from record found in the case of assessee. During the course of appellate proceedings before the us, the Id. Counsel submitted that assessee has filed additional ground of appeal on 13.08.2020 before the Id. CIT(A) which was not adjudicated.

3. Heard both the sides and perused the material on record. We have perused the order of Id. CIT(A) passed u/s 250 of the Act on 07.06.2022 wherein the Id. CIT(A) has adjudicated the following grounds of appeal filed by the assessee:

1. On the facts and in the circumstances of the case, the Assessing Officer, CPC, Bangalore [AO] legally erred in taxing the dividend income on equity shares in excess of Rs.10 lakhs amounting to Rs.40,16,301/- from equity shares twice in the hands of the appellant under two different heads.

1.1 The AO-CPC erred in taxing the dividend income on equity shares in excess of Rs. 10 lakhs of Rs.40,16,301/- as business income (net of business expenses allowed as a deduction) and also under other sources.

1.2 The AO-CPC legally erred in making total addition of Rs.80,32,602/- separately i.e. under income from business of Rs.40,16,301/- and also under the head income from other sources thereby assessing the returned income excessively by Rs,40,16,301/-.

1.3 The appellant received dividend income of Rs.50,16,301/- on equity shares on which it paid taxes u/s115BBDA Of the Act of Rs.4,62,050/- i.e. tax on dividend on equity shares in excess of Rs.10 Lacs.

2. On the facts and circumstances of the case, the AO-CPC erred in not giving credit of SA tax paid of Rs. 4,62,000/-.

3. On the facts and circumstances of the case, the AO-CPC erred in charging of interest u/s 234B of the Act at Rs: 2,72,988/-.

4. On the facts and circumstances of the case, the AO-CPC erred in charging interest u/s 234C of the Act at Rs. 76,590/- instead of Rs. NIL chargeable on the returned income.

5) The appellant craves leave to add, to alter or amend the Grounds of Appeal on or before the hearing of this appeal.”

4. However, we find that the following additional ground of appeal filed by the assessee was not adjudicated by the Id. CIT(A):

“The appellant would like to raise the following additional ground of appeal 1A to be read in consonance with Ground No. 1 -

1A. On the facts and circumstances of the case, the AO, CPC erred in taxing the entire dividend in excess of Rs.10 Lacs amounting to Rs.40,16,301 u/s 115BBDA of the Act under the head income from other sources, which included dividend received on mutual funds of Rs.26,19,399 which is exempt u/s 10(35) of the Act and not chargeable to tax.

1A.1 On the facts and circumstances of the case, the AO, CPC ought to have taxed only the dividend earned on equity shares of domestic companies in excess of Rs.10 Lacs which amounted to Rs.13,96,902. (Actual dividend received Rs.23,96,902 less Rs. 10,00,000) and excluded the dividend on mutual funds amounting to Rs.26,19,399.

1A.2 On the facts and circumstances of the case, the AO, CPC ought to have followed the proposition of real & correct taxation as per the existing

laws and not take any benefit of any ignorance of the law by appellant as laid down by the CBDT in its Circular no. 14(X35) dt. 11/04/1955 and upheld by the Hon'ble Bombay High court in the case of Balmukund Acharya vs. Deputy Commissioner of Income Tax [176 Taxman 316]"

5. Since the additional ground of appeal filed by the assessee were not adjudicated on merit by the ld. CIT(A) therefore we restore the case to the file of ld. CIT(A) for adjudicating the additional ground of appeal filed by the assessee on merit. Therefore, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.10.2024.

Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.10.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai