

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI**

**माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

- (1) आयकरअपील सं./ ITA No.2057/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2007-08)
&**
- (2) आयकरअपील सं./ ITA No.2058/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2008-09)
&**
- (3) आयकरअपील सं./ ITA No.2059/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2009-10)
&**
- (4) आयकरअपील सं./ ITA No.2060/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2010-11)
&**
- (5) आयकरअपील सं./ ITA No.2061/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2011-12)
&**
- (6) आयकरअपील सं./ ITA No.2062/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2012-13)
&**
- (7) आयकरअपील सं./ ITA No.2063/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2013-14)
&**
- (8) आयकरअपील सं./ ITA No.2064/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2014-15)
&**
- (9) आयकरअपील सं./ ITA No.2065/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)**

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(10) आयकरअपील सं./ ITA No.2066/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

(11) आयकरअपील सं./ ITA No.2067/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2018-19)

&

(12) आयकरअपील सं./ ITA No.2068/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2019-20)

&

(13) आयकरअपील सं./ ITA No.2074/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

&

(14) आयकरअपील सं./ ITA No.2075/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2020-21)

M/s. Tweezerman India Pvt. Ltd. C-24, Industrial Estate, Thattanchavady, Puducherry-605 009.	बनाम/ Vs.	ACIT Circle-1 Puducherry.
स्थायीलेखासं./जीआइआरसं./PAN/TAN No. AABCT-3599-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	S/Shri P. Lalith Kumar & Mehul (CAs) – Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri S. Sundar Rajan (JCIT) -Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	06-01-2025
घोषणाकीतारीख / Date of Pronouncement	:	07-01-2025

आदेश / ORDER

Per Bench

1. Aforesaid appeals by assessee for Assessment Years (AY) 2007-08 to 2020-21 have identical facts and issues. The appeal for AY 2007-08 arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 06-06-2024 in the matter of an order passed by Ld. ACIT, Circle-1,

Puducherry on 28-05-2022 rejecting an application filed by the assessee u/s 237 of the Act claiming refund of excess payment of Dividend Distribution Tax (DDT). The grounds raised by the assessee read as under: -

Ground No. 1 - General

The Order passed by the Commissioner of Income Tax (Appeals) ('Ld. CIT(A)') under section 250 of the Income-tax Act, 1961 ('the Act') is unsustainable and bad in law.

The denial of refund and rejection of claim of refund under section 237 of the Act by the CIT(A) is contrary to the law, facts and circumstances of the case and hence liable to be quashed.

The detailed grounds of appeal, including the position in law and facts is set out in the ensuing paragraphs.

Ground No.2 - Dividend Distribution Tax paid by the Company is a tax on shareholders income.

The Ld. CIT(A) has erred in facts and law, by considering that Dividend Distribution Tax ('DDT') is a liability of the Indian resident company and not that of the shareholder of the Company.

Levy of tax on dividend distributed deeming it to be income of the Company would lead to double taxation as dividend is paid out of profits which are already taxed at applicable tax rates.

The Ld. CIT(A) has failed to appreciate the legislative history of taxation of dividend and various judicial precedents relied in our submissions, basis which it could be inferred that DDT paid by the Company is nothing but tax on shareholders income.

Ground No.3 - DDT paid **is a tax** on dividend income of shareholders. Consequently, the **provisions of Double Taxation Avoidance Agreement ('DTAA') shall be applicable and hence, tax liability needs to be determined post factoring the provisions of the Act and relevant Article of DTAA's, whichever is more beneficial.**

The Ld. CIT(A) has erred in facts and law by failing to appreciate that DDT paid is a tax on dividend income of shareholders and the tax liability needs to be determined post factoring the provisions of the Act and relevant Article of DT Ms, whichever is more beneficial.

Ground No. 4- Amendments in dividend taxations provisions in the Act shall not affect the provisions of DTAA.

The CIT(A) has erred in facts and law by not considering the provisions of treaty for determining taxability of dividends in the case of Non-residents.

The CIT(A) has failed to appreciate the fact that subsequent amendments to domestic law shall not contradict international treaty obligations.

Ground No.5- Section 115-0 of the Act does not override the provisions of Tax Treaty entered into by the central government with a country, under section 90 of the Act.

The Ld. CIT(A) has erred in facts and law by placing reliance on Total Oil India P. Ltd. in 149 taxmann.com 332 wherein it was inter alia stated that section 115-O "*starts with a non obstante clause overriding the other provisions of the Act*".

The Ld. CIT(A) has erred in facts and law by stating that "*the domestic company under section 115-0 does not enter the domain of DTAA*"

The Ld. CIT(A) has failed to appreciate the benefit granted to the Appellant under sub-section 2 of section 90 of the Act, which states "*provisions of this Act shall apply to the extent they are more beneficial to that assessee*"

Ground No.6 - DDT paid is a tax on dividend income of shareholders. Consequently, the provisions of DTAA shall be applicable and hence, tax liability needs to be determined post factoring the provisions of the Act and relevant Article of DTAA, whichever is more beneficial.

The Ld. CIT(A) has erred in facts and law by failing to appreciate that DDT paid is a tax on dividend income of shareholders and the tax liability needs to be determined post factoring the provisions of the Act and relevant Article of DTAA, whichever is more beneficial.

Ground No.7 - Specific inclusion of provisions deeming DDT as a tax on shareholders income in a particular tax treaty cannot be construed as leading to its automatic exclusion in other tax treaties

The Ld. CIT (A) has failed to appreciate the fact that the specific inclusion of DDT in a particular tax treaty cannot be construed as an automatic exclusion of the same in other treaties. Consequently, irrespective of a specific inclusion the beneficial tax rates shall be available to DDT as well.

Ground No.8- The Appellant is eligible for DDT refund claim. Further, given that the DDT has been paid by the Indian Company and consequently, the refund claim would need to be made by the Indian company and not the non-resident shareholders.

The Ld. CIT(A) has erred in facts and law by failing to appreciate that the appellant is eligible to DDT refund. Further, the Ld. CIT(A) ought to have considered the fact that the liability to discharge DDT is on the Company declaring the dividends and accordingly, the claim for refund of excess DDT paid by the Indian Company shall be required to be made by the Indian company and not the non-resident shareholders.

9. Ground No. 9- The Appellant is eligible for DDT refund claim. Further, the time limit under section 239 of the Act relates to income of the company and does not relate to DDT refund claim

The Ld. CIT(A) has erred in facts and law by failing to appreciate that the appellant is eligible to DDT refund and time limit prescribed under section 239 of the Act pertains to the income of the Company and does not relate to DDT refund claim. Further, dividend is not income of the company, but of the shareholder.

Ground No.10 - Other grounds

That the Ld. CIT(A) while passing the impugned order grossly erred on the facts and in law in disregarding various judicial precedents relied on by the Appellant in its submission.

2.1 From the orders of lower authorities, it emerges that that assessee is a subsidiary entity of two German-based entities. The non-resident entity M/s Zwilling International held 79.98% equity shares of the assessee whereas another non-resident entity M/s Zwilling Beauty held 9.75% shares of the assessee entity. The assessee paid dividend to its shareholders and in terms of provisions of Sec.115-O, it paid Dividend Distribution Tax (DDT) of 15% on dividend so paid by the assessee.

2.2 Subsequently, the assessee made refund application u/s 237 on the ground that as per Article-10 of India-Germany DTAA, such dividend would be liable to DDT only at the rate of 10% in the hands of the recipients. However, Ld. AO denied the same on the ground that DDT was additional Income Tax levied on distributed profits of the company i.e., payer entity. It is a tax on income of payer entity and not tax on the shareholders. With effect from, 01-04-2020, DDT was abolished and withholding tax was introduced on payment of dividend. As a result of new provisions, dividend was now to be taxed in the hands of the recipients. These provisions would not apply retrospectively. Accordingly, the claim was rejected.

2.3 The Ld. CIT(A), relying on the decision of Mumbai Tribunal (Special Bench) in the case of **Total Oil India Pvt. Ltd. (149 Taxmann.com 332)**, confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

3. Though the Ld. AR has relied on exhaustive written submissions which are placed on record, yet it is admitted position that the aforesaid issue is squarely covered against the assessee by the cited decision of Special Bench of Mumbai Tribunal. The final conclusion of the Special Bench was as under: -

Conclusion:

83. For the reasons give 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 DTAA's. 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.

Since Ld. CIT(A) has followed a binding judicial precedent, we find no reason to interfere in the impugned orders, for all the years.

4. All the appeals stands dismissed.

Order pronounced on 07th January, 2025.

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 07-01-2025
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF