

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3383/MUM/2024
(Assessment Year: 2017-2018)**

Sony Music Entertainment India Private Limited

2nd Floor, First International Financial Centre,
G Blcok, Bandra Kurla Complex Road,
Vidyanagari SO, Mumbai – 400 098
Maharashtra.
[PAN:AAICS1766Q]

..... **Appellant**

Vs

**Assistant Commissioner of Income Tax,
Circle 16(1), Mumbai**

Room No.439, 4th Floor, Aayakar Bhavan,
Maharshi Karve Road, Mumbai – 400020
Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Ajit Jain
For the Respondent/Department : Shri Suresh Gaikwad

Date

Conclusion of hearing : 28.11.2024
Pronouncement of order : 19.02.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the order, dated 28/03/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order dated 25/12/2019, passed under Section 143(3) of the Act for the Assessment Year 2017-2018.
2. The Appellant has raised following grounds of appeal :

"1. Ground No.1: Claim of Dividend Distribution Tax ('DDT') Refund

- 1.1. *On the facts and in the circumstances of the case, and in law, the learned Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre ['CIT (A)'] has erred in not granting the benefit of the rate prescribed in Article 10 of the India Netherlands Double Taxation Avoidance Agreement ('DTAA') read with the Most Favoured Nation ('MFN') clause with respect to Article 10 of India-Slovenia DTAA in determining the dividend declared and paid by the Appellant to SBME Holdings BV ('SBME') being tax on dividend income. Consequently, the refund of excess DDT paid by the Appellant as claimed during the assessment proceedings be granted.*
- 1.2. *The Appellant prays that the learned Assessing Officer ('Assessing Officer') be directed to allow the aforesaid refund.*

2. Ground No.2: Levy of interest under Section 115P of the Act of INR.1,15,69,787

- 2.1. *On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in upholding levy of interest under Section 115P of the Act amounting to INR.1,15,69,787 without appreciating the fact that there is no delay in depositing the principal amount of DDT.*
- 2.2. *The Appellant prays that the learned Assessing Officer ('Assessing Officer') be directed to delete the abovementioned incorrect levy of interest under section 115P of the Act.*

3. Additional Ground (Letter dated 07/10/2024): Non – Grant of credit of Dividend Distribution Tax (DDT) paid on INR.3,50,59,9565/-

- 2.3. *On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in dismissing the Appellant's claim for credit of DDT paid of INR.3,50,59,965/-.*

The Appellant prays that the learned Assessing Officer ('Assessing Officer') be directed to grant credit of DDT paid of INR.3,50,59,965/-.

3. We have heard both the sides, perused the material on record and examined the position in law in view of the submissions advanced.

4. There was a delay of 32 days in filing the appeal. In the application seeking condonation of delay supported by sworn affidavit, it was stated that the delay in filing appeal was caused on account of failure of the concerned person to locate/track the email communication received from the Department regarding disposal of appeal by the CIT(A). Keeping in view the facts and circumstances of the present case, the advertent delay of 32 days in filing the appeal is condoned.
5. The Appellant had also raised additional ground related to non-grant of credit of DDT paid amounting to INR.3,50,59,965/- by way of letter, dated 07/10/2024. We note that the Appellant had also raised this issue as Ground No. 5 in appeal preferred before the CIT(A). Since, all the relevant facts are on record and the additional grounds would not require any fresh investigation into facts. In view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd vs. CIT :[229 ITR 383 (SC)], the additional ground raised by the Appellant is admitted.
6. **Ground No.1** raised by Appellant is directed against the order of the CIT(A) rejecting Appellant's claim for refund of DDT of INR.2,64,49,954/-.
- 6.1. The relevant facts in brief are that the Appellant had paid dividend of INR.17,22,20,109/- to its holding company, SBME Holding BV, Netherlands, on which DDT of INR.3,50,59,965/- was paid under Section 115-O of the Act. Placing reliance on the provisions of Double Taxation Avoidance Agreement between India and Netherlands, the Appellant claimed that DDT was paid at a higher rate and therefore, sought refund of excess DDT paid (at the rate of 15.36%) amounting to INR.2,64,49,954. The Assessment Order ignored the aforesaid claim made by the Appellant while passing the assessment order, whereas the CIT(A), in appeal, rejected the

aforesaid claim for refund of DDT by placing reliance upon the decision of Special Bench of the Tribunal in the case of Deputy Commissioner of Income-Tax Vs. Total Oil India Private Limited : [2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB), dated 20/04/2023. Being aggrieved, the Appellant has carried the issue in appeal before the Tribunal

- 6.2. We note that In the case of Total Oil India Private Limited (supra), it was held by the Special Bench of the Tribunal that the provisions of Double Taxation Avoidance Agreement (DTAA) do not get triggered in case of payment of DDT under Section 115-O of the Act by a domestic company unless the applicable DTAA specifically extends such protection to the domestic company paying the DDT. Both the sides agreed that the issue Ground No. 1 is covered by the aforesaid decision of the Special Bench of the Tribunal. Accordingly, we do not find any infirmity in the order passed by CIT(A) on this issue. Accordingly, Ground No.1 raised by the Appellant is dismissed.
7. **The Additional Ground and Ground No.2** raised by Appellant pertain to non-grant of credit of DDT of INR.3,50,59,965/- and levy of interest of INR.1,15,69,787/- under Section 115-O of the Act in respect of the same. During the course of hearing it was submitted on behalf of the Appellant that DDT of INR.3,50,59,965/- was deposited in time. The Assessing Officer had failed to grant credit for the same and had also levied interest of INR. INR.3,50,59,965/- incorrectly. It was submitted the grievance of the Appellant would be addressed in case the issue was restored to the file of the Assessing Officer for verification. The Learned Departmental Representative also submitted that the factual averments required verification. Accordingly, the issue raised in the additional ground pertaining to non-grant of credit of DDT payment of INR.3,50,59,965/- and issue raised in Ground No. 2 relating to levy of interest of

INR.1,15,69,787/- under Section 115-O of the Act are restored back to the file of Assessing Officer with the directions to the Assessing Officer to verify the factual averments made by the Appellant regarding the deposit of DDT in time and grant credit of DDT accordingly. The Assessing Officer is also directed to re-compute the interest payable under Section 115-O of the Act in case on verification it is found that there was a delay in deposit of DDT. It is clarified that the Appellant shall be granted reasonable opportunity of being heard as per law. In terms of the aforesaid, Ground No.2 and the Additional Ground is allowed for statistical purposes.

45. In result appeal preferred by the Assessee is partly allowed.

Order pronounced on 19.02.2025.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.02.2025

आदेश की प्रतिलिपि ँ ग्रेषित/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