IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 9456/MUM/2025 **(Assessment Year: 1999-00)**	**ITA No. 9460/MUM/2025** **(Assessment Year: 2004-05)**
ITA No. 9457/MUM/2025 **(Assessment Year: 2000-01)**	**ITA No. 9461/MUM/2025** **(Assessment Year: 2005-06)**
ITA No. 9458/MUM/2025 **(Assessment Year: 2001-02)**	**ITA No. 9462/MUM/2025** **(Assessment Year: 2006-07)**
ITA No. 9459/MUM/2025 **(Assessment Year: 2003-04)**	

Deputy Commissioner of Income Tax – 3(1)(1),
Room No.607, 6th Floor, Aayakar Bhawan,
Mumbai – 400020 ..... Appellant

v/s

Export Import Bank of India,
Centre One Building, Floor 21,
World Trade Centre Complex,
Cuffe Parade,
Mumbai – 400005
PAN : AAACE2769D ..... Respondent

Assessee by : Ms. Aarti Vissanji
Revenue by : Shri Ritesh Misra, CIT-DR

Date of Hearing – 25/03/2026	Date of Order - 30 /03/2026

O R D E R

PER BENCH :

The Revenue has filed the present appeals against the separate impugned orders of even date 03.10.2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*"), by the learned Commissioner of Income

Tax (Appeals), National Faceless Appeal Centre, Delhi ["*learned CIT(A)*"], which in turn arose from the separate order passed under section 237 of the Act, for the assessment years 1999-00 to 2001-02 and 2003-04 to 2006-07.

2. Since all the appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the Revenue's appeal for the assessment year 1999–00 is considered as the lead case, and the decision rendered therein shall apply *mutatis mutandis* to the Revenue's appeals for the other years before us.

3. As the Revenue has raised similar grounds in these appeals, the ground of appeal raised in assessment year 1999-00 is reproduced as follows for ready reference: -

> *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the dividend distribution tax u/s.115-0 without appreciating the fact that sharing of profit with the shareholders comes under the definition of dividend as per section 2(22) of the IT Act."*

4. The solitary grievance of the Revenue is against the deletion of dividend distribution tax under section 115-O of the Act.

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an entity established by an Act of Parliament titled the Export-Import Bank of India Act, 1981. The entire capital of the assessee is subscribed by the Government of India. The main object of the assessee is to facilitate export.

For this purpose, various types of activities, including long-term project finance outside India and other export financing, have been taken up by the assessee since its establishment. The assessee filed an application under section 237 of the Act, seeking a refund of the tax paid under section 115-O along with interest. The Assessing Officer ("*AO*"), vide its order dated 29.07.2019, passed under section 237 of the Act, held that the assessee is a domestic company as well as an Indian company and thus is exigible to tax on dividend as defined under section 2(22) of the Act. It was held that during the year under consideration, the assessee transferred Rs. 31.58 crore to the credit of the Central Government as dividend and therefore, the provisions of section 115-O of the Act are applicable to such transfer. Thus, the AO held that the assessee, being a domestic company, and the payment of dividend to the Central Government is taxable under section 2(22) of the Act. Accordingly, the AO computed the tax on dividends and interest thereon at Rs. 3.63 crore and rejected the application filed by the assessee under section 237 of the Act.

6. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee following the decision of the Tribunal rendered in the assessee's own case for the assessment years 2010–11 to 2015–16, which in turn followed the decision of the Tribunal in Life Insurance Corporation of India vs. JCIT. Accordingly, the learned CIT(A) held that the provisions of section 115-O of the Act are not applicable, as the amount transferred to the credit of the Central Government is not a distribution of dividend by the assessee, but a mandatory transfer of funds in terms of section 23(2) of the Exim Act, 1981,

and therefore, the provisions of section 115-O of the Act are not applicable to the present case. Consequently, the addition of Rs. 3.63 crore made by the AO under section 2(22) of the Act was directed to be deleted. Being aggrieved, the Revenue is in appeal before us.

7. During the hearing, apart from placing reliance upon the order passed by the AO under section 237 of the Act, the learned Departmental Representative did not bring any material on record to controvert the findings of the learned CIT(A), which are based on the decision of the Coordinate Bench of the Tribunal in the assessee's own case.

8. On the other hand, the learned Authorised Representative ("*learned AR*") vehemently relied upon the order passed by the Coordinate Bench of the Tribunal in the assessee's own case for the assessment years 2010–11 to 2015–16.

9. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A), while deciding this issue in favour of the assessee, observed as follows: -

> *"Ground No.1:-*
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> *At the outset the appellant has argued that the payment made by the appellant to the Central Government in terms of Section 23(2) of the Exim Bank Act is not dividend and hence the provisions of Section 115-0 of the Act are not applicable to it. For this purpose, the appellant placed reliance on the decision of the Hon'ble ITAT Mumbai Bench "G" in the appellant's own case for A.Ys. 2012-13 to 2015-16 dated 14.02.2020, wherein it was held as under:-*
>
> > *"13. Now, the question arises what is the ordinary meaning of the word 'dividend'. It is not necessary for us to look into the dictionaries inasmuch as the answer to such question is no more res integra. The Hon'ble Supreme Court had to consider this question with reference to Section 2(6A) of 1922*

Act corresponding to Section 2(22) of the Act of 1961. Their Lordships held as under:

"Dividend", in its ordinary connotation, means the sum paid to or received by a shareholder proportionate to his shareholding in a company out of the total sum distributed."

The above definition presupposes (1) the existence of shareholders of a company and (ii) payment must be proportionate to his share holding, in our opinion, these conditions can be fulfilled only when the capital of the company is divided into shares which are held by persons called shareholders. In a given case, all the shares may be held by Government or a holding company etc. Existence of shares representing the capital of the company as well as the shareholder(s) is a sine qua non. Thus, even according to the ordinary meaning of the word 'dividend', it represents proportionate payment to the shareholders according to his shareholding in the company. Therefore, where capital of the company is not divided into shares, the payment to the subscriber to the capital cannot be treated as dividend.

14. Before coming to the merits of the present ca se, we would like to reproduce the observation of the Hon'ble Supreme Court in the case of Keshavji Raji & Co. v. CIT at page 11 as under:

"When words acquire a particular meaning or sense because of their authoritative construction by superior courts, they are presumed to have been used in the same sense when used in a subsequent legislation in the same or similar context.

In view of the above observations, the ordinary meaning of the word 'dividend' as declared by the Apex Court in the case of Nalin Behari Lall Singha (supra) has to be assumed tor the purpose of Section 2(22) of the Act since the Legislature has not deviated, expressly or impliedly, from the meaning declared by the Apex Court.

15. In the present case, the assessee is the creation of Life Insurance Corporation Act, 1956. Section 5 of the said Act provides that original capital of the Corporation would be 5 crores of rupees which shall be provided by the Central Government. This Section reads as under:

"5. Capital of the Corporation.-(!) The original capital of the Corporation shall be five crores of rupees provided by the Central Government after due appropriation made by Parliament by law for the purpose, and the terms and conditions relating to the provisions of such capital shall be such as may be determined by the Central Government.

(2) The Central Government may, on the recommendation of the Corporation, reduce the capital of the Corporation to such extent and in such manner as the Central Government may determine.

Reading of above Section clearly shows that capital of the company is not divided into shares and therefore Central Government cannot be said to be shareholder. The position of the Central Government is akin to the sole

proprietor of a business concern. The learned Commissioner (Appeals) has himself given a finding that Central Government cannot be called a shareholder. This finding has also been upheld by us in the earlier part of the order. Therefore, in our considered opinion, the payment made by the assessee to the Central Government could not be treated as 'dividend' within the ambit of definition Clause (22) of Section 2 of the Act.

16. The decisions relied upon by the senior departmental Representative does not help the case of revenue. In the case of Kantilal Manilal (supra), the Hon'ble Supreme Court has held that distribution of the right to shares of bank of India to its shareholders amounted to distribution of dividend. That means that dividend can be distributed in cash or kind. To the same effect is the decision of Hon'ble Madhya Pradesh High Court in the ca se of Ujjain General Trading Society (P.) Ltd. v. CIT (1968) 67 ITR 315. In the case of Smt. Mrudulaben B. Patel v. Asstt. CIT (2003) 85 ITD 463 (Ahd.) (SMC), the question was whether any part undisclosed income of a company received by director could be said to be income chargeable to tax. In the case of Kishanchand Chellaram v. CIT (1962) 46 ITR 640 (SC), the question was whether payment made as dividend by a company to its shareholders would lose the character of dividend merely because it was paid out of capital. In all these, there existed share capital of company as well as shareholders. Thus, the facts of those cases were entirely different from the present case inasmuch as in the present case neither there exists share capital nor shareholder.

17. Having held that payment by assessee to Central Government is not dividend, it i s not necessary for us to deal with the other arguments of the parties since payment of dividend is the condition precedent for invoking the provisions of Section 115-0. Accordingly, it is held that the provisions of Section 115-0 of the Act were not applicable to the present case. Consequently, the assessee could not be declared as assessee in default under Section 115Q of the Act. In view of the same, the orders of both the authorities below are quashed. The payment, if recovered, shall be refunded to the assessee in accordance with law.

18 In the result, appeal of the assessee is allowed."

Considering the peculiar facts of the case as decided by the co-ordinate bench of Tribunal in the case of Life Insurance Corporation of India Vs. JCIT, I am inclined to hold that in this case the provisions of Section 115-O of the Act are not applicable as this is not a distribution of dividend by the appellant but a mandatory transfer of funds in terms of Section 23(2) of the Exim Act and, therefore, provisions of Section 115-0 of the Act are not applicable to the present case. Since the facts of the case are binding precedent of the jurisdictional Tribunal, the appellant's application u/s.237 of the Income-tax Act is admissible. Consequently, the addition of Rs.3,63,00,000/- made by the A.O. u/s.2(22) is found to be unjustified and is hereby deleted. Accordingly, Ground No.1 of the appeal is allowed."

10. From the perusal of the findings of the learned CIT(A), it is evident that the learned CIT(A) followed the judicial precedents in assessee's own case

rendered by the Coordinate Bench of the Tribunal in ITA No. 7720/Mum/2014, etc., for the assessment years 2010–11 to 2015–16, wherein it was held that the payment by the assessee to the Central Government is not dividend and, therefore, the provisions of section 115-O of the Act are not applicable. In the absence of any allegation of change in the facts and law during the year under consideration, respectfully following the decision of the Coordinate Bench of the Tribunal rendered in assessee's own case, we do not find any infirmity in the findings of the learned CIT(A) on this issue, which are in turn based on the findings of the Coordinate Bench of the Tribunal in assessee's own case. Accordingly, the sole ground raised by the Revenue in its appeal is dismissed.

11. In its appeals for the assessment years 2000–01, 2001–02 and 2003–04 to 2006–07, the Revenue has raised an identical ground challenging the deletion of dividend distribution tax under section 115-O of the Act. From the perusal of the impugned order in the Revenue's appeal in these years, we find that the learned CIT(A), following the decision of the Coordinate Bench of the Tribunal in assessee's own case cited *supra*, arrived at the conclusion that the provisions of section 115-O of the Act are not applicable, as the amount transferred to the credit of the Central Government is not a distribution of dividend, but a mandatory transfer of funds in terms of section 23(2) of the Exim Act, 1981. Since a similar issue has already been adjudicated by us in the assessee's appeal for the assessment year 1999–2000, our findings/conclusion rendered therein shall apply *mutatis mutandis* to the appeals filed by the Revenue for the assessment years 2000–01, 2001–02,

2003–04 to 2006–07. Accordingly, the sole ground raised by the Revenue in its appeals in these years is dismissed.

12. In the result, all the appeals by the Revenue are dismissed.

Order pronounced in the open Court on 30/03/2026

Sd/- **OM PRAKASH KANT** **ACCOUNTANT MEMBER**	**Sd/-** **SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 30/03/2026
Prabhat

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai