

आयकर अपीलीय अधिकरण “ ई ” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “E”, MUMBAI**

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND
SHRI CN PRASAD, JUDICIAL MEMBER**

ITA NO. 1241/MUM/2014 : (A.Y : 2011-12)

M/s Empire Industries Ltd. Vs. ACIT Range 6(2)
Empire House, 414, Aayakar Bhavan
Senapati Bapat Marg MK Road
Lower Parel New Marine Lines
Mumbai – 400 013 Mumbai – 400 020
PAN : AAACE2757R

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : **Shri Girish Dave**
प्रत्यर्थी की ओर से Revenue by : **Smt Anupama Singh**

सुनवाई की तारीख / **Date of Hearing : 16/11/2016**
घोषणा की तारीख **Date of Pronouncement : 10/02/2017**

आदेश / O R D E R

PER C.N.PRASAD (J.M.) :

This appeal is filed by the assessee against the order of the Ld. CIT (Appeals)-12, Mumbai dated 03.12.2013 for the assessment year 2011-12. The assessee has raised the following grounds.

“1. The learned CIT(A) erred in confirming demand of Rs.5,09,849/- raised by learned ACIT vide intimation dated 11 July 2012 under section 143(1) of the Income-tax Act, 1961 (the Act) in respect of Dividend Distribution Tax (DDT).

2. The learned CIT(A) erred in confirming the action of learned ACIT in levying tax under section 115-0 of the Act in respect of dividend of Rs. 13,19,99,956/- declared, distributed and paid during financial year 2011-12 at the rate of 16.60875% as against the correct rate of 16.2225% as applicable to the AY 2012-13.

3. The learned CIT(A) ought to have appreciated that the dividend of Rs. 13,19,99,956/- was declared, distributed and paid in the financial year 2011-12 relevant to the assessment year 2012-13, hence the DDT rate applicable for the AY 2012-13 (i.e. 16.2225%) would apply to such dividend.

4. The learned CIT(A) erred in not directing the learned ACIT to grant credit for taxes deducted and collected at source of Rs.4,86,72,752/- as claimed by the appellant in the return of income as against Rs.4,85,17,372/- allowed in the intimation.

5. The learned CIT(A) erred in confirming the levy of interest of Rs.4,491/- under section 234C of the Act as against correct amount of Rs. 1,789/- as computed in the return income.”

2. The first issue in the appeal of the assessee is that the Ld. CIT (Appeals) erred in confirming demand of Rs.5,09,849/- raised by the assessing officer in the intimation dated 11.07.2012 passed u/s 143(1) of the Act in respect of Dividend Distribution Tax (DDT). The contention of the assessee was that the assessing officer while processing the return u/s 143(1) for the assessment year 2011-12 applied DDT rate of 16.60875% as against 16.2225% on the dividend declared, distributed and paid by the assessee in the financial year 2011-12 relevant to the assessment year 2012-13. The contention of the assessee was that the DDT applicable for the assessment year 2012-13 is 16.2225% including surcharge and education cess, but not 16.60875%. The Ld.

Counsel submits that since the dividend was declared, distributed and paid in the financial year 2011-12 relevant to the assessment year 2012-13, the correct applicable rate of DDT is 16.2225, but the Ld.CIT is not justified in holding that the rate should be applied which is applicable to the assessment year 2011-12. The Ld. Counsel for the assessee further submits that the rectification petition was also filed before the assessing officer and the said rectification petition is still pending for disposal. Therefore, he submits that a direction may be given to the assessing officer to dispose of the rectification petition also.

3. The Ld. DR supported the orders of the authorities below.

4. We have heard the rival submissions, perused the orders of the authorities below and the rectification petition filed before assessing officer. The assessee filed rectification petition before assessing officer as under.

“PAN: AAACE2757R

Assessment Year: 2011-12

Rectification under section 154 of the Income Tax Act 1961 (the Act)

We refer to the intimation dated 11 July 2012 issued under section 143(1) of the Act for the captioned assessment year.

On a perusal thereof, we note that a demand of Rs 4,47,237 has been raised as :

(i) Dividend Distribution Tax (DDT) has been computed on applying a tax rate of 16.60875% instead of 16.2225% as applicable for the previous year 2011-12, being the year in which the dividend was declared and paid;

(ii) Credit for taxes deducted and collected and source has been restricted to Rs.4,85,17,372 instead of Rs.4,86,72,752 as claimed by the Company;

(iii) Interest of Rs.4,491 has been levied under section 234C of the Act as against Rs.1,789 as computed by the Company.

In this connection we state as under:

1. The appellant declared final dividend of Rs. 13,19,99,956/- on 26 August 2011. The said dividend was distributed and paid on 7 September 20.11. In terms of section 115-0 of the Act, the liability to pay DDT arises within fourteen days of declaration or distribution or payment of dividend, whichever is earliest. Accordingly, as dividend was declared on 26 August 2011 being the earliest of the relevant event, DDT of Rs. 2,14,13,693/- was paid on 6 September 2011. The same was based on the tax rate of 16.2225% as applicable to the previous year 2011-12, being the year in which the DDT was declared and paid.

However, in the intimation dated 11 July 2012, DDT has been erroneously worked out on applying a tax rate of 16.60875%.

2. In the return of income (ROI) for the year under consideration, the Company had claimed credit for taxes of Rs.4,86,72,752/- deducted and collected at source. However, in the impugned intimation, credit has been restricted to Rs.4,85,17,372/- thereby resulting in short credit of Rs. 1,55,380/-

3. In the ROI, interest of Rs.1,789/- was computed and paid by the Company under section 234C of the Act. However, interest of Rs.4,491/- has been levied in the intimation. As the above constitute mistakes apparent from record, we request you to pass an order under section 154 of the Act on rectifying the same.”

5. On hearing both the parties and perusal of the 154 petition, we are of the considered view that this matter is to be examined afresh by the assessing officer and to apply correct rate of tax. Thus we restore this matter to file of the assessing officer with the direction to decide the issue afresh. We also direct the assessing officer to dispose of the rectification petition filed u/s 154 of the Act by the assessee at the earliest.

6. The remaining two grounds revised by assessee are regarding short credit for TDS and wrong calculation of interest u/s 234(c) of the Act. We find that these two issues were also the part of rectification petition filed by the assessee before assessing officer. Therefore, we restore these two issues also to the file of the assessing officer with the direction to examine and decide these issues in accordance with law after providing adequate opportunity of hearing.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 10th day of February 2017.

Sd/-

RAJENDRA
लेखा सदस्य /
ACCOUNTANT MEMBER

मुंबई / Mumbai; दिनांक / Dated 10/02/2017

LR, SPS

Sd/-

C.N.PRASAD
न्यायिक सदस्य /
JUDICIAL MEMBER

Empire Industries Ltd.
ITA Nos.1241/Mum/2014

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mum