आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य के समक्ष

BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 442/JP/2016
निर्धारण वर्ष/Assessment Year : 2010-11

M/s Drawmet Wires Pvt. Ltd., B-482, Industrial Area, Bhiwadi, Alwar (Raj.)	बनाम Vs.	ACIT, Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACD7355E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 443/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12

M/s Drawmet Wires Pvt. Ltd., B-482, Industrial Area, Bhiwadi, Alwar (Raj.)	बनाम Vs.	ACIT, Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACD7355E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Sogani (CA)
राजस्व की ओर से/ Revenue by : Shri Sailendra Sharma (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 03/10/2017
उदघोषणा की तारीख/ Date of Pronouncement : 11/10/2017

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against the two separate orders of ld. CIT(A) both dated 15.03.2016 arising from the order passed under Section 154 of the I.T. Act for the Assessment years 2010-11 & 2011-12 respectively.

2. For the Assessment year 2010-11 the assessee has raised the following grounds of appeal are reproduced as under:-

> "*1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in rejecting the grounds of appeal without providing cogent reasons. The action of ld. CIT(A) is illegal, justified, arbitrary and against the facts of the case.*
> *2. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO in rejecting the application under Section 154 of the Income Tax Act, 1961 when the errors were apparent on record. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by rectifying the errors and quashing the demand of Rs. 34,79,725/-.*
> *3.(a) In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO in not accepting the rectification regarding the fact that no dividend was declared or paid for the Assessment year 2010-11. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting the rectification and quashing the demand accordingly.*
> *(b) In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the ld. AO in rejecting the application under Section 154 when the facts apparent on record do confirm that there was no liability of DDT in this A.Y. i.e. 2010-11. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting the rectification and quashing the demand accordingly.*
> *4. The assessee Company craves its right to add, amend or alter any of the grounds on or before the hearing."*

3. The assessee is a company and carrying on the business of manufacturing stainless Steel Wires and Iron Ropes. The assessee filed its return of income, electronically, on 09.10.2010 and shown a dividend of Rs. 1,95,00,000/- for the A.Y. 2010-11. The return of income was processed by CPC, Bangalore on 15.03.2011 and a demand of Rs. 34,79,725/- was raised on account of Dividend Distribution Tax (DDT) and after the adjustment of refund of Rs. 89,064/- the net demand was raised to the declare of Rs. 33,90,660/-. Thereafter, the assessee filed an application under Section 154 of the I.T. Act on 27.02.2013 wherein the assessee claimed that no dividend has been paid in the previous year relevant to the assessment year under consideration. The assessee claimed that dividend of Rs. 1,95,00,000/- has been paid in the previous year relevant to the Assessment Year 2011-12.The AO did not accept this contention of the assessee that the dividend was paid in the previous year relevant to the Assessment Year 2011-12 on reason that in the balance sheet ending on 31.03.2010 the assessee has shown the dividend declared of Rs. 1,95,00,000/-. The AO held that the dividend was declared for the F.Y. 2009-10 and therefore, the liability to pay DDT arise in the A.Y. 2010-11.

4. Being aggrieved by the order of the Assessing Officer passed u/s 154, the assessee filed an appeal before the ld. CIT(A) and contended

that during the financial year relevant to the A.Y. 2010-11, the Board of Director of the assessee company merely proposed a dividend of Rs. 1,95,00,000/- subject to the approval of the share holders in the Annual General Meeting (AGM). Hence, the assessee contended before the ld. CIT(A) that the dividend was finally declared on 28.09.2010 as approved by the share holders in the AGM held on the said date. The assessee explained that the declaration of dividend on 28.09.2010 would fall in the A.Y. 2011-12 and not in the A.Y. 2010-11, the assessee also placed the reliance on various decisions. The ld. CIT(A) did not accept the contention and explanation of the assessee and upheld the action of the AO in charging the DDT for the assessment year under consideration.

5. Before the Tribunal the ld. AR of the assessee has submitted that the assessee proposed the dividend of Rs. 1,95,00,000/- in the Board meeting held on 20.08.2010. Since this proposal of dividend was prior to the filing of the return of income, therefore, the assessee has mistakenly and inadvertently shown this amount of dividend in the schedule of DDT of the return form and mention the details of dividend declaration by it on 29.09.2010. The said return was processed u/s 143(1) however, there was a mistake in the return of income and wrong declaration of tax liability on account of dividend distribution tax. Therefore, the assessee filed an application for rectification u/s 154. The assessee has furnished all the

relevant facts as well as details to show that the declaration of dividend would fall in the A.Y. 2011-12 and not in the assessment year under consideration. The Ld. AR further pointed out that there was another mistake in the challan under which the dividend distribution tax was paid as it was shown as deposit of TDS u/s 194 instead of DDT u/s 115 O. Therefore there are various factual mistake in the return of income as well as in the challan which shows that the assessee has inadvertently and due to inexperience staff has shown this amount in the return of income as dividend declared during the year under consideration. Once the assessee has produced all the records and establishment that the dividend was declared on 29.09.2010 and the same was paid on 01.10.2010 then liability on account of dividend distribution tax would arise only in the A.Y. 2011-12. The ld. AR has relied upon the following decision as under:-

- Hon'ble Kolkatta Bench Tribunal in the case of BMW Industries vs. CIT 54 Taxmann.com 135.

- Hon'ble AP High Court in the case of NMDC Ltd. 383 ITR 56(AP).

- Hon'ble ITAT Rajkot Bench in the case of ACIT vs. Rupam Impex in ITA No. 472/RJT/2014.

6. The ld. AR further submitted that as per the amended accounting standard 4 if an enterprise declares dividend to its share holders after the balance sheet date, the enterprise should notes recognize those dividends as a liability at the balance sheet date unless statute requires otherwise such dividends should be disclosed in not therefore as per accounting standard, the assessee is not required to recognize the dividend declared after the balance sheet date as a liability at the balance sheet date. The AR has submitted that no tax liability on account of DDT arises during the assessment year under consideration as the dividend in question was declared on 29.09.2010 which fall for the A.Y. 2011-12.

7. On the other hand, the DR has submitted that the assessee itself has declared this fact of declaration of dividend in the return of income and further the dividend pertains to the financial year relevant to the assessment year under consideration, therefore, the dividend distribution tax is applicable in the assessment year under consideration. He has further submitted that the case law relied by the assessee are not on the issue of assessment year in which the DDT liability would arise. He has further pointed out that the declaration of dividend even as per the assessee's own admission was within the period of 6 months from the end of the financial year and therefore, the liability on account of DDT arises

during the year under consideration. He has referred to section 8 of the I.T. Act and submitted that the dividend income pertains to the assessment year in which the dividend is declared, distributed or paid. He has relied upon the orders of the authorities below.

8. I have considered the rival submissions as well as the relevant material on record. Section 115 O of the I.T. Act stipulates the chargeability of additional income tax in respect of the amount declared, distributed or paid by a domestic company by way of dividend on or after 01.04.2003. For reading reference, section 115 O is quoted as under:-

"Section 115 O.

(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the Income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of 91 [fifteen] per cent.]

[(1A) The amount referred to in sub-section (1) shall be reduced by

(i) the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and;

(a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or

(b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend;

Provided that he same amount of dividend shall not be taken into account for reduction more than once.

(ii) The amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in clause (44) of section 10.

Explanation- For the purposes of this sub-section, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

(1B)……..

(2)……

(3)…..

(4)…..

(5)…….

(6)…….

Provided that the provisions of this sub-section shall cease to have effect from the 1st day of June, 2011."

Section 115 O postulates the DDT being an additional income tax which is levied only on the amount declared, distributed or paid by way of dividend. It contemplates the instance of chargeability to tax on the amount of dividend only when it is declared, distributed or paid. Hence, the instance of charge/levy of tax u/s 115 O is the declaration, distribution or payment of dividend and not relate back to the year for which the dividend is declared, distributed or paid. The instance for charge of DDT dependents

on the declaration, distribution or payment and not to the year for which it is declared, distributed or paid. Sub-section (1A) of section 115 O further clarifies that the amount of dividend so declared, distributed or paid shall be reduced by the amount of dividend if any received by the domestic company from its subsidiary during the financial year which means that the relevant financial year as referred in sub-section (1A) is the same in which the dividend is declared, distributed or paid as well as any amount of dividend which is received by such company from its subsidiary. Section 8 of the I.T. Act further strengthens this aspect of applicability of dividend only in the year of declaration, distribution or payment. For reading reference, section 8 is quoted as under:-

"Section 8

For the purposes of inclusion in the total income of an assessee.-

(a) any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be;

(b) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it"

Section 8 envisages the inclusion of dividend income in the total income of the previous year in which it is so declared, distributed or paid. From the

conjoint reading of the relevant provisions of section 115 O as well as section 8 of the Act makes its clear that the DDT is chargeable only when the dividend is declared, distributed or paid whichever is earlier and not prior to that. Section 8 is consistent with section 115 O and corroborate this analogy by treating dividend income as part of the total income of the previous year in which the dividend is declared, distributed or paid as case may be.

The Hon'ble AP High Court in case of CIT vs. NMDC Ltd. (supra) while dealing with an identical issue of chargeability of DDT as held in para 6 & 7 are as under:-

"6. Section 173 of the Companies Act requires an explanatory statement to be annexed to notice except, among others, declaration of dividend. Section 217 of the Companies Act relates to the report of the board of Directors. Section 217(1)(c) stipulates that there shall be attached to every balance sheet, laid before a company in general meeting, a report by its board of Directors with respect to the amount, if any, which it recommends should be paid by way of dividend. Table-A of the I schedule to the Companies Act contain the Regulations for management of a company limited by shares. Regulation 85 there under stipulates that the company, in the general meeting, may declare dividend, but no dividend shall exceed the amount recommended by the Board. A copy of the Articles of Association of the assessee has also been placed before us. Article 94 thereof provides that the company in the general meeting may declare a dividend to be paid to the members according to their rights and interests in the profits, but no dividend shall exceed the amount recommended by the Directors. The Supreme Court in Commissioner of Income Tax vs Express Newspapers Limited referred with approval to its

earlier judgment in J. Dalmia vs. Commissioner of income Tax, and to Articles 85 and 86 of Table A of the I Schedule to the Companies Act, to hold that the power of the Board of Directors of company is only to declare interim dividend, whereas final dividend is to be declared only by the company in its general meeting. It is evident, therefore, that the power of the board of Directors is only to recommend dividend; and it is for the shareholders of the company, in the general meeting, to declare dividend. It is not in dispute that dividend tax, under Section 115-P of the Act, was paid by the assessee well within 14 days of declaration of dividend by the shareholders in the Annual General Meeting.

7. The contention of the Revenue that a provision for payment of dividend, in the balance sheet of the assessee, would itself amount to declaration of dividend does not merit acceptance, as provision for payment of dividend does not automatically result in payment of dividend. It is only after the Board of Directors decide to recommend dividend, and the share holders in the general meeting approve the recommendation of the Board of Directors, can dividend be held to have been declared. We find no error in the orders of the Tribunal, much less a substantial question of law, necessitating interference under section 260-A of the Act."

The Rajkot Bench of this Tribunal in case of CIT vs. Rupam Impex (supra) while deciding with the scope of section 154 of I.T. Act has also taken a similar view in para 9 as under:-

"9. A lot of emphasis is placed on the fact that the mistake was committed by the assessee himself which has resulted in the error creeping in the assessment order as well. Instead of being apologetic about the complete non application of mind to the facts and making a mockery of the scrutiny assessment proceeding itself, the Assessing Officer has justified the mistake on record on the ground that it is attributed to the assessee. The income tax proceedings are not adversarial proceedings. As to who is responsible for the mistake is not material for the purpose of proceedings under section 154; what is material is that there is a mistake- a mistake which is clear, glaring and which is incapable of two views being

taken. The fact that mistake has occurred is beyond doubt. The fact that it is attributed to the error of the assessee does not obliterate the fact of mistake or legal remedies for a mistake having crept in. It is only elementary that the income liable to be taxed has to be worked out in accordance with the law as in force. In this process, it is not open to the Revenue authorities to take advantage of mistakes committed by the assessee. Tax cannot be levied on an assessee at a higher amount or at a higher rate merely because the assessee, under a mistaken belief or due to an error, offered the income for taxation at that amount or that rate. It can only be levied when it is authorised by the law, as is the mandate of Act. 265 of the Constitution of India. A sense of fair play by the field officers towards the taxpayers is not an act of benevolence by the field officers but it is call of duty in a socially accountable governance. If authority is needed even for justifying this approach to the taxpayers, one need not look beyond the circulars issued by the CBDT itself. In Circular No. 14, which has been taken note of by the Hon'ble Bombay High Court in the case of ***Dattatraya Gopal Bhotte vs. CIT [(1984) 150 ITR 460 (Bom)],*** *the Board has these words of advice for the field officers :*
".....Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist taxpayer in every reasonable way, particularly in the matter of claiming and securing any relief and in this regard the officers should take initiative in guiding the taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would in the long run benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Government....."

Accordingly, it is settled proposition of law that DDT is chargeable only in the year when it is declared, distributed or paid and not prior to that. In the case on hand the assessee has produced all relevant record to show that the dividend was proposed by the Board of Directors in the meeting

held on 28.08.2010 which was approved by the share holders in the Annual General Meeting held on 29.09.2010. Though the assessee has shown the dividend liability in the balance sheet for the F.Y. 2009-10 relevant to the A.Y. 2010-11 however, when this fact is not disputed by the authority below that the dividend in question was proposed on 28.08.2010 which was finally declared on 29.09.2010 and paid on 01.10.2010 then the instance of chargeability of dividend distribution tax arises only on declaration of dividend on 28.09.2010 which is prior to the date of payment on 01.10.2010. Ttherefore, the liability on account of DDT would arise only in the A.Y. 2011-12 and not in the A.Y. 2010-11. Though the assessee has committed various mistakes in giving the details in the return of income as well as in the challan under which the tax was paid regarding the date of payments, the date of distribution however, when the assessee has brought on record the relevant evidence to show that the dividend was actually declared on 28.09.2010 then this cannot be charged to tax u/s 115 O in the year under consideration merely on the basis of mistakes committee by the assessee. Accordingly, we set aside the impugned orders of the authority below and allow the claim of the assesse that no dividend is chargeable to tax during the year under consideration.

9. For the Assessment Year 2011-12, the assessee has raised the following grounds of appeal as under:-

> *"1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in rejecting the grounds of appeal without providing cogent reasons. The action of ld. CIT(A) is illegal, justified, arbitrary and against the facts of the case.*
> *2. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the ld. AO in rejecting the application under Section 154 of the Income Tax Act, 1961 when the errors were apparent on record. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by rectifying the errors and quashing the demand of Rs. 39,51,220/-.*
> *3.(a) In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the ld. AO in not allowing the credit for the Dividend Distribution Tax paid amount to Rs. 32,38,706/- on the simple plea that the challan was wrongly paid through TAN instead of PAN. The Action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing credit of DDT paid amounting to Rs. 32,38,706/-.*
> *(b) In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the ld. AO in not allowing the credit for the Dividend Distribution Tax paid amount to Rs. 32,38,706/- on the simple plea that the challan was deposited for the A.Y. 2010-11 and not for the year under consideration. However, other facts on record, beyond doubt, do confirm that the Challan pertains to A.Y. 2011-12. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by allowing the credit of DDT paid amounting to Rs. 32,38,706/-.*
> *4. The assessee Company craves its right to add, amend or alter any of the grounds on or before the hearing."*

10. The issue in the A.Y. 2011-12 is an identical as in the A.Y. 2010-11. The assessee claimed that the tax liability on account of declaration and

payment of dividend was already discharged by the assessee as the tax was paid on 01.10.2010 which was assessed by the AO for the A.Y. 2010-11. The dividend declared for the F.Y. 2010-11 was claimed by the assessee as chargeable to tax only for the A.Y. 2012-13 and not for the A.Y. 2011-12.

11. I have heard AR as well as DR and considered the rival submissions as well as the relevant material on record. The AR has pointed out that dividend was proposed by the Board of Directors in the meeting held on 22.08.2011 which is after the balance date and closing of financial year and further, the said proposal was approved in the AGM held on 30.09.2011. Therefore, the dividend was declared on 30.09.2011 and was paid by the assessee on 10.10.2011. Since the amount of dividend is identical of Rs. 1,95,00,000/- therefore, the Assessing Officer has again assessed this amount to the DDT in the year under consideration. He has further pointed out that no demand has been raised by the Revenue for the A.Y. 2012-13 though the DDT is chargeable to tax only for the A.Y. 2012-13.

12. On the other hand, the DR has reiterated its contention has raised for the A.Y. 2010-11 and submitted that the assessee itself has declared

this amount in the return of income and further the approval of the dividend is within 6 months from the end of the financial year.

12. I have considered the rival submissions as well as the relevant material on record. It is noted that the facts for the A.Y. 2011-12 are almost identical as A.Y. 2010-11 and therefore in view of the finding on this issue for the A.Y. 2010-11on principle this issue is decided in favour of the assessee because the instance of chargeability of tax arises on 30.09.2011 when the dividend was declared which would fall in the A.Y. 2012-13 and not in the A.Y. 2011-12. It is pertinent to note that there are two instances of chargeability of DDT and the dispute is only regarding the assessment year in which the dividend so declared by the assessee is chargeable to tax u/s 115 O of the Act. Therefore, as far as the principle demand on account of DDT is concerned there is no dispute about the total amount of principle demand and the only dispute which may arise in any case is regarding the interest on the said demand. The dividend declared on 30.08.2011 is chargeable to DDT only during the A.Y. 2012-13 but AO has not raised any demand for the said assessment as it was assessed for the A.Y. 2011-12. Therefore, even if the tax liability is determined in the A.Y. 2011-12 it is in fact the liability for the A.Y. 2012-13. Accordingly, in the facts and circumstances of the case that this issue

set aside to the record of the AO to verify the payment made by the assessee on 10.10.2011 on account of DDT in respect of the dividend amount of Rs. 1,95,00,000/- declared on 30.09.2011. If the said amount is till available for credit in the account of the assessee and has not been adjusted against any other tax liability then the Assessing Officer may consider the said amount against the taxability on account of DDT which is chargeable for the A.Y. 2012-13.

In the result, both the assessee of the appeals are allowed.

Order pronounced in the open court on 11/10/2017.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य /Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 11/10/2017
*Santosh
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s Drawmet Wires Pvt. Ltd., Bhiwadi, Alwar (Raj.)
2. प्रत्यथी/ The Respondent- The ACIT, Circle-2, Alwar.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 442&443/JP/16)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar