

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.239/Bang/2019 : Asst.Year 2003-2004

Smt.Thankamma Sebastian LR – Sri.John L Sebastian No.7A D/Costa Layout 1 st Cross, Bangalore – 560 084. PAN : ABAPS5119H.	v.	The Income Tax Officer Ward 1(2)(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Nitish Ranjan, CA
Respondent by : Capt.Pradeep Shoury Arya, Addl.CIT

Date of Hearing : 22.12.2021	Date of Pronouncement : 23.12.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.10.2018. The relevant assessment year is 2003-2004.

2. The grounds raised read as follows:-

“1. The order of the ld.Commissioner of Income Tax (Appeals) is opposed to law, facts and circumstances of the case.

2. The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.

3. The order is passed against the principle of natural justice and thus liable to be quashed.

4. On the facts and circumstances of the case and in law, the ld.CIT(A) erred in confirming the action of ld.Assessing Officer in respect of dividend income received from IPF Breeders Pvt. Ltd.

5. The ld.CIT(A) has grossly erred in upholding the addition made by the ld.AO of Rs.25,00,000/- under section 2(22) of the Act without considering the fact that the said amount was part of interim dividend declared by the company on which dividend distribution tax was already paid.

6. The ld.CIT(A) has erred in ignoring the provision of section 115-O of the Act as per which, payment of dividend distribution tax is considered as final payment of tax and thus, taxing the same under section 2(22) of the Act is bad in law.

7. The ld.CIT(A) and ld.AO failed to appreciate that the company had declared the interim dividend during the previous year 1999-2000 and remitted the DDT along with interest under section 115-P of the Act in the subsequent previous year 2000-01 during which sections 115-O and 10(33) were very much in existence.

8. Notwithstanding the above, the ld.CIT(A) and the ld.AO ought to have appreciated the fact that the impugned payment of Rs.25,00,000 was made in course of liquidation proceedings of the company and hence should be treated in accordance with provisions of section 46 of the Act.

9. The ld.CIT(A) and the ld.AO failed to consider that once dividend distribution tax is paid on profits, it loses characteristics of accumulated profits and rather partakes the characteristics of distributable profits and thus, falls outside the ambit of definition of dividend income.

10. Notwithstanding the above, the ld.CIT(A) and ld.AO, the impugned payment was return of capital invested by the appellant and did not include any portion of accumulated profits so as to be taxed under section 2(22) of the Act.

11. The ld.CIT(A) and ld.AO have omitted to consider the decision of the ld.CIT(A), in the case of Mr.T.Manuwanan, who was the another shareholder of the above mentioned company, holding 75% of the shares, wherein it was held that the said receipt of refund of equity share capital was not liable to be taxed. The decision was accepted by the Revenue.”

3. The brief facts of the case are as follows:

The assessee is an individual, who is carrying on the business of labour contract and consultancy. For the

assessment year 2003-2004, the return of income was filed on 31.10.2003 declaring total income of Rs.48,66,740, which was processed u/s 143(1) of the I.T.Act. Consequent to information received from DCIT, Trichur,the assessment was reopened u/s 147 of the Act and reassessment was completed on 12.12.2007, determining total income of Rs.1,02,36,398. One of the additions made by the Assessing Officer was dividend income of Rs.25,00,000. The A.O. held that sum of Rs.25 lakh was received during the financial year relevant to the assessment year 2003-2004 for which the assessee is not entitled to any exemption, in the absence of section 10(33) of the Act and accordingly taxed the same as deemed dividend. On further appeal, the CIT(A) confirmed the view taken by the Assessing Office as regards the dividend income of Rs.25 lakh. On further appeal, the Tribunal vide its order dated 22.06.2011 in ITA No.391/Bang/2010, restored the issue to the files of the A.O. The Tribunal directed the A.O. to verify the facts and pass appropriate order in accordance with law after affording sufficient opportunity of being heard. Pursuant to the ITAT's order, the assessment was completed vide order dated 25.02.2013, wherein the addition of dividend income of Rs.25 lakh was again made. The relevant observation of the A.O. reads as follows:-

"I have carefully gone through the documents furnished by the assessee and facts and circumstances of the case. The amount is received during the financial year relevant to the A.Y. 2003-04, for which the assessee is not entitled for any exemption in the absence of Sec.10(33) for that year. Considering the above facts, I am of the opinion that the claim

of the assessee is disallowable and accordingly Rs.25,00,000/- is added back to the income of the assessee.”

4. Aggrieved by the order of the Assessing Officer, the assessee filed appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follows:-

“5.3 Since in the year under consideration neither section 10(33) were in the statute which provide exemption to the dividend income received as referred to in section 115-O. Earlier clause 33 was inserted by the Finance Act 1997, substituted by Finance Act 1999 amended by Finance 2001 later on omitted by Finance Act 2002, Sub section 34, 35 & 36 are inserted with effect from 01.04.2004. In between period neither sub section 33 nor 34 were existing. The AR’s arguments are in two folds. One is that the dividend declared by the company will not fall under the definition of dividend within the meaning of section 2(22) since dividend includes any distribution by the company out of accumulated profits and when the appellant company declared dividend there were no surplus funds and therefore it cannot be termed as dividend. The appellant received 25 lakhs on liquidation / slump sale as distributed dividends declared interim and paid DDT under section 115-O. Since dividend was declared before liquidation and payments made in the course of liquidation and therefore in order to apply the provision of section 46(2) the issue to be examined is that on what basis the dividend declaration was made. However, the Dividends were declared before liquidation and dividend distribution tax was paid u/s 115-O by the company, the provision of section 46(2) is not applied. Further in the year under consideration neither sub clause 33 nor 34 were in the statute in order to claim exemption and therefore the Assessing Officer has rightly treated as dividend u/s 2(22) of the IT Act the grounds are not allowed.”

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR has filed a paper book comprising of 126 pages enclosing therein the written submissions filed before the Income Tax Authorities

and earlier assessment order, the minutes of the meeting of declaration of interim dividend, certificate of bank regarding payment of dividend distribution tax, statement of affairs as on 31.03.2002 and 31.03.2003 etc. The learned AR reiterated the submissions made before the AO. And the CIT(A).

6. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

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7. We have heard rival submissions and perused the material on record. Admittedly, the dividend income of Rs.25 lakh was received in the previous year relevant to assessment year 2003-2004 (Rs.17,96,500 on 07.11.2002 and Rs.7,03,500 on 09.11.2002). For the assessment year 2003-2004, the assessee was not entitled to exemption of dividend income in absence of section 10(33) of the Act (section 10(33) of the Act was omitted by the Finance Act, 2002). Moreover, the contention of the assessee that the impugned payment of Rs.25 lakh is in the nature of capital in view of the fact that the company was under liquidation proceedings, and accordingly, such distribution will have to be taxable in accordance with section 46(2) of the Act is also devoid of any merits, because dividend was declared before liquidation and dividend distribution tax was paid u/s 115-O of the Act by the company (dividend was declared on 05.07.1999 and dividend distribution tax was paid on 31.01.2001). Therefore, the provisions of section 46(2) of the Act do not have application to the facts of the present case. In the light of the aforesaid reasoning, we see no reason to interfere with the

order of the CIT(A) and we uphold the same as correct and in accordance with law. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 23rd day of December, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 23rd December, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bengaluru.
4. The Pr.CIT-1, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore