

Riso India Private Limited vs Principal Commissioner Of Income Tax ... on 8 December, 2021

Author: Manmohan

Bench: Manmohan, Navin Chawla

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 13962/2021

RISO INDIA PRIVATE LIMITED

Through

Mr.Manuj Sabharwal, Adv

versus

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI - 7

..... Respondent

Through

Mr.Sunil Agarwal, stand

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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08.12.2021

C.M.No.44027/2021

Exemption allowed, subject to all just exceptions. Accordingly, the application stands disposed of.

Present writ petition has been filed challenging the order dated 6th October, 2021 passed by the Respondent. Petitioner also seeks a direction to Respondent to apply the tax rate on dividend prescribed under India-Japan DTAA, and consequently issue refund of excess tax paid under Section 115- O of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') along with statutory interest under Section 244A till the date of credit of refund to the bank account of the Petitioner.

Learned counsel for the Petitioner states that during the previous year relevant to Assessment Year 2016-17, Petitioner remitted dividend to its holding company Riso Kagaku Corporation, Japan ('Riso Japan') (being a resident of Japan) aggregating to Rs.92,92,500 on which tax under Section 115-O of the Act was paid @ 20.35%. However, he states that the said payment was taxable @ 10% as per beneficial provisions of India-Japan DTAA and, thus, excess tax of 10.35% was paid by the Petitioner for which the refund was sought by the Petitioner, and an application was filed under Section 264 of the Act on 28th November, 2019, which was rejected by the impugned order.

Learned counsel for the Petitioner states that Dividend Distribution Tax (DDT) is a tax on dividend, which is income of the shareholder, who is a tax resident of Japan and hence the provisions of the

India-Japan DTAA would be squarely applicable. He submits that the action of the Respondent to tax dividend income under Section 115-O in an unfettered manner without resorting to the provisions of the applicable DTAA is clearly contrary to provisions of the Act and well-settled principles of law.

Learned counsel for the Petitioner relies upon the decision of Delhi ITAT in Giesecke & Devrient India Pvt Ltd. v ACIT [(2020) 120 taxmann.com 338 (Del)], which squarely covers the issue in the present case. He states that the Delhi ITAT held that DDT payable under Section 115-O of the Act to the non-resident shareholder cannot exceed the dividend rates prescribed under the DTAA.

Learned counsel for the Petitioner further submits that Section 115-O of the Act is to be reconciled with Article 10 of the DTAA and rate of taxation provided in Section 115-O has to be restricted to the rate provided under DTAA. He states that the interpretation, which Revenue has sought to place upon Section 115-O, could never be the intent of the Parliament as it would amount to breach of international law / obligations agreed under DTAA.

Issue notice. Mr.Sunil Agarwal, standing counsel accepts notice on behalf of the respondent. He submits that the matter pertains to the period during which DDT regime under Section 115-O of the Act was prevalent. Under this system, the tax on distributed profits was to be borne by the company distributing the dividends and subsequently the dividends received by the shareholders post payment of DDT by the company was statutorily exempt from tax under Section 10 of the Act. He further submits that the rate of tax on distributed profits, that is applicable, is the one stipulated under Section 115-O of the Act and not the one prescribed under Article 10 of the DTAA because the rate of tax in the hands of the shareholders is more beneficial under the Income Tax Act as compared to the DTAA.

Learned counsel for the respondent is directed to file a counter- affidavit within four weeks. Rejoinder-affidavit, if any, be filed before the next date of hearing.

List on 11th May, 2022.

MANMOHAN, J NAVIN CHAWLA, J DECEMBER 8, 2021 KA