

DDT to be refunded if dividend paying and receiving companies merged before declaration of dividend.

Summary – The Gujarat High Court in a recent case of Torrent (P.) Ltd., (the Assessee) held that where there was amalgamation of dividend paying and dividend receiving companies prior to declaration of dividend, such payment would cease to retain the character of dividend since no dividend could be paid by company to itself.

Facts

- Eight different companies got amalgamated with the applicant-company pursuant to the scheme of amalgamation which was sanctioned by the High Court.
- One of the amalgamated-company Torrent had after the effective date of amalgamation, but before the sanction of scheme, declared and paid out dividend to three shareholder companies which included the applicant-company and two other amalgamated companies and had also deposited dividend distribution tax on it.
- The applicant-company filed the return of income and noted that by virtue of amalgamation of different companies, the dividend declared by TPL would no longer bear the character of dividend. It further moved an application before the Assessing Officer claiming refund of the dividend distribution tax already paid.
- The Assessing Officer rejected the application of the applicant-company on ground that the applicant-company failed to point out any provision in the Act under which such refund can be granted. He observed that dividend itself was not revoked at any stage and once dividend has been declared/paid, liability to pay tax as per section 115-O arose and tax had to be paid.
- On petition for revision, the Commissioner observed that the petition was not maintainable as the same was not filed against the order passed by the Assessing Officer and mere correspondence between the petitioner and the Assessing Officer cannot be treated to be an order stipulated under section 264. He further examined the claim on merits and held that the same was not acceptable.

Held

- The Commissioner committed a serious error in holding that the revision petition was not maintainable and also thereafter proceeding to decide the issues on merits and coming to the conclusion that even on merits, the claim of the petition was not tenable.
- If an authority under the Act comes to the conclusion that certain proceedings were not maintainable before him, the only course open would be to dismiss the same as being not competent. Once he concludes that he does not have the competence to allow a revision petition,

he is equally not competent to reject the same on merits. In other words, the Commissioner could not have examined the merits of the petitioner's claim unless he himself was convinced that the revision petition was maintainable. His dual stand that the revision petition was not maintainable and further that on merits also, the petitioner had no arguable case, in law is self-contradictory. Only an authority competent to entertain certain proceedings, be it in original, appellate or revisional nature, can hand down a decision on merits.

- The petitioner had moved an application to the Assessing Officer seeking refund of the dividend distribution tax already paid. Such application was rejected by the Assessing Officer by a detailed speaking order. Merely because such application was not in a formal format, the same would not change the character of the application being one seeking refund under the Act. The Assessing Officer, after hearing the petitioner made a detailed speaking order dealing with the petitioner's claim for refund. Such order also cannot be simply brushed aside as one being correspondence between the assessee and the Assessing Officer. Essentially, the Assessing Officer passed an order rejecting the petitioner's claim for refund. Such order was certainly amenable to revision at the hands of the Commissioner under section 264.
- In the instant case, certain dividend was declared and paid by one of the companies which ultimately merged with the assessee-company along with other companies. Before the date of declaration and payment of dividend, scheme for amalgamation was framed. By virtue of the decision of the High Court, such scheme was sanctioned with no variation in the effective date. Thus, the date of amalgamation which actually took effect was prior to the date on which dividend was declared and paid. In that view of the matter, it is held that by virtue of such subsequent developments, the payment of dividend could no longer retain the character of dividend paid to Torrent since there cannot be payment of dividend by one company to its own self.
- In view of the above, the HC allowed the petition in favour of the assessee.