Concessional rate to tax the dividend isn't available under treaty if it couldn't be taxed in country of accrual.

Summary – The Mumbai ITAT in a recent case of Roop Rasyan Industries (P) Ltd., (the Assessee) held that where assessee, a resident of India, received dividend from a Singapore based company in which it owned more than 25 per cent shareholding, in view of Para 1 of article 10 of India - Singapore DTAA, amount so received was liable to be taxed at normal rate of 30 per cent.

Facts

- The assessee received dividend income from a Singapore based company. The said income was offered to tax at normal tax rate.
- Subsequently, assessee filed a revised return relying upon article 10 of India-Singapore DTAA. According to assessee, since it was having more than 25 per cent of shareholding in the foreign company from which the dividend income was received, as per Para 2 of article 10 of DTAA, the dividend was taxable at the rate of 10 per cent of the gross amount.
- The Assessing Officer did not accept the contention of the assessee and held that in the relevant article of the DTAA what had been dealt with was the taxability of the dividend in the state in which the dividend was declared and not the resident state in which the dividend was received.
- Accordingly, the Assessing Officer taxed the dividend income in question at normal rate of 30 per cent.
- The Commissioner (Appeals) concurred with the view of the Assessing Officer.
- On second appeal.

Held

- As per Para 1 of article 10 of India - Singapore DTAA, the dividend paid by a company which is the resident of a contracting state to a resident of other contracting state to be taxed in the other state in which the recipient is resident. Para 2 of article 10 contemplates a situation where such dividend may also be taxed in the contracting state of which the company paying the dividend is resident.
- However, the tax so charged is limited to 10 per cent of the gross amount of the dividend if the recipient owns at least 25 per cent of the shares of the company paying the dividend and in other cases, the taxability of the dividend in the contracting state of which the company paying the dividend is resident is 15 per cent of the gross amount of the dividend.
- Thus, Para 2 of article 10 of DTAA deals with the percentage of taxability of the dividend in the contracting state of which the company paying dividend is a resident, if the dividend is also taxed in the said contracting state.
- Since in the case in hand the dividend was not taxable in Singapore of which the company paying the dividend was resident, Para 2 of article 10 of DTAA was not at all relevant.

- The ITAT held that even otherwise, for the purpose of taxability of dividend in India and particularly the rate of tax, only Para 1 of article 10 of DTAA is relevant.
- As per Para 1 of article 10 of DTAA, the dividend received by the Indian company from a Singapore company is subjected to tax at the normal rate of 30 per cent.
- Accordingly, the appeal filed by the assessee was dismissed by the ITAT.