

## No denial of exemption just because payer-co. didn't pay DDT on distribution of dividends

**Summary – The High Court of Bombay in a recent case of Smt. Kayan Jamshid Pandole, (the Assessee) held that Even if payer company had not paid tax on dividend distribution under section 115-O, exemption would be allowed to receiver in terms of section 10(34)**

### Facts

- The assessee was holding shares of company SML. A scheme of arrangement of buyback was formulated by the company SML. SML purchased shares held by assessee and several other shareholders of the same group.
- The income received by the assessee under such arrangement was offered by the assessee by way of capital gain. The revenue was of the opinion that the income was in the nature of deemed dividend in terms of section 2(22)(d). It was further opined that since the company SML had not paid any tax on distribution of such dividend as required under section 115-O, the assessee could not claim exemption under section 10(34).

### Held

- Section 2(22), as is well known, includes range of situations under which payment by company to its shareholders would amount to distribution of dividend. Clause (d) of section 2(22) provides that any distributions to its shareholders by the company on reduction of capital to the extent to which the company possesses the accumulated profit which arose after end of previous year, under certain circumstances would be included in the term 'dividend'.
- Section 10(34), in turn, exempts from payment of tax, any income by way of dividend referred to section 115-O. As per sub-section (1) of section 115-O notwithstanding anything contained in the provisions of Act and subject to the provisions of the said section in addition to the income-tax chargeable in respect of the total income of the domestic company, any amount declared, distributed or paid by such company by way of dividend on or after 1-4-2003 would be chargeable to additional income-tax referred to as tax on distributed profits.
- The question would be whether the deemed dividend under section 2(22)(d) would fall within the purview of sub-section (1) of section 115-O. However, the legislature has advisedly cleared this position by providing an *Explanation* to section 115-Q. Section 115-Q provides that if any Principal Officer of domestic company and a company does not pay tax on distributed profits in accordance with the provisions of section 115-O then he or it shall be deemed to be an assessee-in-default in respect of the amount of tax payable to him or it and all the provisions of the Act for collection and recovery of the income-tax shall apply. This provision thus makes a specific reference to unpaid distribution tax by a company. An *Explanation* to section 115-Q which existed at the relevant time

but which was omitted by the Finance Act, 2018 and provided that for the purposes of the said Chapter (chapter XIID) which contains sections 115-O and 115-Q, the expression 'dividend' shall have the same meaning as is given to dividend under sub-section (22) of section 2, but shall not include sub-clause (e) thereof.

- The plain effect of the *Explanation*, therefore, would be that even the deemed dividend under section 2(22)(d) would be covered for the purpose of Chapter XIID. In turn, therefore, such deemed dividend would be one which is referred to section 115-O. Inescapable conclusion, therefore, would be that such dividend also would be exempt from tax in the hands of the receiver in terms of section 10(34).
- The contention of the revenue that the company having not paid such dividend distribution tax, exemption under section 10(34) should be deprived to the assessee needs to be noted only for rejection. If a certain income is exempt at the hands of recipient by virtue of statutory provision, unless a provision is made in the statute itself, such exemption cannot be withdrawn only because the payer has not paid tax. The statute has made specific provision for recovery of unpaid tax from the company. In the result, the tax appeal is to be dismissed.