Foseco India Ltd — Income Tax Appeal Nos. 1123/2025, 1049/2025, 1088/2025 and connected matters

Complete public court-copy transcription. Clean reference PDF generated by Finin2min; not an original court facsimile.

Public source: https://indiankanoon.org/doc/81921414/

31-ITXA-1029-2025.DOC Vidya Amin IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION INCOME TAX APPEAL NO. 1123 OF 2025 Foseco India Ltd. Company ... Appellant Versus Assistant Commissioner of Income Tax, Circle1(1), Pune ... Respondents WITH INCOME TAX APPEAL NO. 1049 OF 2025 WITH INCOME TAX APPEAL NO. 1088 OF 2025 WITH INCOME TAX APPEAL NO. 1055 OF 2025 WITH INCOME TAX APPEAL NO. 1086 OF 2025 WITH INCOME TAX APPEAL NO. 1080 OF 2025 WITH INCOME TAX APPEAL NO. 1029 OF 2025 _________ Mr. Sagar Tilak a/w Sachin Hande, Preshita Adamane and Saachi Bhiwandkar i/b Sachin Hande for Appellant. Mr. N. Venkataraman, ASG a/w Sushma Nagaraj, Ms. Amira Razaq, Krithika Anand, Abhinav Palsikar, Chandrashekara Bharathi and Nakul Madhan i/b Sushma Nagaraj for Respondent. Mr. Vinod Tanwani (I.R.S.) (Principal Commissioner of Income Tax, Central - 3, Mumbai), representative of the Revenue, Present. __________ CORAM : G. S. KULKARNI & AARTI SATHE, JJ. RESERVED ON : 05 MARCH 2026 PRONOUNCED ON : 27 APRIL 2026 Oral Order : (Per G. S. Kulkarni, J.) Page 2 of 42 2026 ::: Uploaded on - 27/04/2026 ::: Downloaded on - 29/04/2026 00:33:30 ::: > 31-ITXA-1029-2025.DOC

3. The Tribunal considered the appeal for the Assessment Year 2014-15 as the lead matter. The question of law as involved as also the facts as involved are similar except the difference in the amounts of tax. We accordingly refer to the facts in the lead matter (Income Tax Appeal No.1123 of 2025) which pertain to the Assessment Year 2014-15.

4. The relevant facts are : > The assessee is a company engaged inter alia in the business of manufacture, marketing and trading of foundry chemicals and foundry fluxes for the metallurgical industry, including the steel and foundry industry. Under , the charge is on a component of the profits of the company; that component representing profits declared, distributed or paid. The tax under is not a tax which is paid by the company on behalf of the shareholder, nor does the company act as an agent of the shareholder in paying the tax. > Provisions contained in Chapter XII-D are special provisions relating to tax on the distribute profits of domestic companies. Even in Chapter XII-D clearly states that the additional income-tax liability there under is on the amount of profits declared, distributed or paid by a domestic company as dividend. Thus, the additional income-tax under is a tax on profits and not a tax on dividend. The assessee, hence, contended that in the facts and circumstances of the case, excess DDT paid during the relevant Assessment Year, be refunded to the assessee, since as per the provisions of of the Income Tax Act read with of the Constitution, only legitimate tax could be retained by the Revenue. The CIT(A), however was not persuaded to accept the contentions as urged on behalf of the assessee and by an order dated 28 March 2024, rejected the appeals filed by the assessee, inter alia on the following reasons :- the assessee before us, cannot seek treaty protection in India- except for the purpose of, in deserving cases, where the cases are covered by the nationality non- discrimination under , deductibility non-discrimination under , and ownership no discrimination under as, for example, specifically extends the scope of tax treaty protection. to the "enterprises of one of the or partly owned or controlled Contracting States, the capital of which is wholly as directly or indirectly, by one or more residents of the other Contracting State The same is the position with respect of the other non-discrimination provisions. No such extension of the scope of treaty protection is envisage or demonstrated, in the present case. The Special bench of the Tribunal had considered the position in law as laid down on the decision of this Court in . 1, wherein, it was held that the DDT is not a tax paid on behalf of the shareholder but was an additional tax paid by the company. It was observed that such decision of this Court was upheld by the Supreme Court in 2. It is on the aforesaid backdrop, the present appeals are filed by the assessee. Submissions on behalf of the Assessee/Appellant.

12. Mr. Sagar Tilak, learned counsel for assesssee, at the outset has submitted 1 2010 SCC OnLine Bom 1174 2 2017 (7) SCC 421 Page 10 of 42 2026 ::: Uploaded on - 27/04/2026 ::: Downloaded on - 29/04/2026 00:33:30 ::: 31-ITXA-1029-2025.DOC that the present appeals were filed on 3 March 2025, however, in the intervening period, the questions of law which have arisen in these appeals stand answered by the decision of the Division Bench of this court at Goa in M/s. ■31†Colorcon Asia Private Limited Vs. It is on the component of the profits of the company, the component representing the profits declared, distributed/paid. It is also not a tax which is paid by the company on behalf of the shareholder nor does the company act as an agent of the shareholder in paying the tax. It is submitted that the decision of the Supreme Court in the appeal from of this Court in ■cite■20†Godrej & Boyce Mfg Co. Ltd. v Deputy Commissioner of Income Tax and Anr.5■ did not, in any manner, dilute or overrule the decision of this Court. (iv) It is submitted that further, the issue in the present appeals also stands covered by the decision of the Division Bench of this Court in Small Industries Development Board of India vs Central Board of Direct Access 6 wherein, this Court has specifically held that, the tax under of the IT Act is on the company's profits and more specifically on the part of the profit which is declared, distributed or paid by way of dividend.

19. We note our prima facie views on the issues. At the outset, we may note the provisions of of the Income Tax Act which reads thus:- > "Tax on distributed profits of domestic companies. Page 15 of 42 2026 ::: Uploaded on - 27/04/2026 ::: Downloaded on - 29/04/2026 00:33:30 ::: > 31-ITXA-1029-2025.DOC 115-O. [(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003 [but on or before the 31st day of March, 2020], whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of [fifteen] per cent:] [Provided that in respect of dividend referred to in sub-clause (e) of clause (22) of , this sub-section shall have effect as if for the words "fifteen per cent", the words "thirty per cent" had been substituted.] [(1A) The amount referred to in sub-section (1) shall be reduced by,- (4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid. (5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon. In this context, sub-section (4) of is significant Page 18 of 42 2026 ::: Uploaded on - 27/04/2026 ::: Downloaded on - 29/04/2026 00:33:30 ::: 31-ITXA-1029-2025.DOC which provides that the tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividend and no further credit

therefore shall be claimed by the company or by any other person in respect of the amount of tax so paid. Also sub-section (5) is pertinent in the present context, which provides that no deduction under any provision of the shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon. Thus, on a plain applicability of the provision, it is clear that dividend distribution tax ("DDT") is a tax on the company and not on a shareholder. > 39. The plain meaning of is that no deduction can be allowed in respect of expenditure incurred by an assessee in relation to income which does not form part of the total income under the Act. provides for incomes which shall not be included in computing the total income of a previous year of any person. Prior to the amendment brought about by the of 2003 with effect from 1 April 2003, income by way of dividends referred to in and income received in respect of the units of a mutual fund did not form part of the total income by virtue of the provisions of clause 33 of . (Clause 33 of was omitted by the of 2003.

46. In (1963) 48 ITR (SC) 206 the Supreme Court construed the provisions of and of the Indian Income Tax Act, 1922. Sub-section (2) of provided that any dividend shall be deemed to be income of the year in which it is paid regardless of the question as to when the profits out of which the dividend is paid were earned. By a deeming fiction introduced by Section 49B, when a dividend was paid to a shareholder by a Company which was assessed to tax, the income tax in respect of such dividend was deemed to have been paid by the shareholder himself. The Supreme Court observed that the position as a matter of general law was as follows: In such a case, the liability on the Company is on profits of business income, where as the tax liability on the shareholder would be on the dividend income. The legislature has chosen to exempt tax o n dividend income and has chosen to impose additional tax on profits distributed as dividend. Therefore, the tax as well as additional tax are taxes levied on a domestic company on its profits and it cannot be said that the regular / normal tax is levied on profits and the additional tax is levied on the dividend. When specifically states that the additional tax is on the profits distributed as dividend, there is no reason to hold that the additional income-tax is a tax on dividend. Supreme Court in the context of the questions as raised by the assessee also framed two questions to be decided as referred to in paragraph 9 of its judgment. Paragraphs 8 and 9 are required to be noted, which reads thus: > 8. The High Court by the impugned judgment dated 12th August, 2010, inter alia, held that of the Act has to be construed on a plain grammatical construction thereof and the said provision is attracted in respect of dividend income referred to in as such income is not includible in the total income of the shareholder. At such point of time when the said position was reversed (by the of 2002; reintroduced again by the), it was the assessee who was liable to pay tax on such dividend income. In such a situation the assessee was entitled under of the Act to claim the benefit of exemption of expenditure incurred to earn such income. Once and was reintroduced the position was reversed. The above, actually fortifies the situation that of the Act would operate to disallow deduction of all expenditure incurred in earning the dividend income under which is not includible in the total income of the assessee. > (i) The Dividend Distribution Tax (DDT) paid by the Colorcon Asia Pvt. Ltd./appellant to its shareholder was squarely outside the scope of DTAA between India and the United Kingdom as held by the Special bench of the Tribunal in Total Oil Pvt. Ltd. without dealing with the detailed distinctions filed by the appellant. > (ii) DDT does not fall within "Taxes covered" under of India - UK DTAA. (iii) Colorcon's contention to restrict the tax rate of DDT to the extent of withholding tax rate on dividend income under of the India- UK DTAA has no merit.

6. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.]" > (emphasis supplied) > 32. The assertion of ■cite■31†Colorcon Asia Pvt. Ltd.■ (supra) was by juxtaposing the effect of of the Income Tax Act read with the consequence of qua the applicability of , as included in Chapter XII-D in form of "Special Provisions relating to Tax on Distributed Profits of Domestic Companies", in the light of the definition of term 'Dividend' under of the Income Tax Act, and by taking into consideration the legislative history surrounding the insertion and repeal of , read alongwith the memorandum, offering the justification for such amendment. Since under the , DDT is levied on Dividend distributed company, which amounts to income in the hands of shareholder and being "additional tax" it covered within the definition of Tax as defined in of the Act and since it is covered by Charging , it must be necessarily subservient to the provisions of the Act which include Section > 90."

34. The Division bench referring to (supra) held that the reliance on such decision would not govern the question that arises for consideration, as the Division Bench opined that it was undisputed position that DDT is tax on dividend income having been declared, distributed and paid to Colorcon UK, the same would stand covered under the definition of dividend under India-UK DTAA. It was hence held that the decision in ■20†Godrej & Boyce Mfg. Co. > "14. Dividend is defined in of the IT Act to, inter alia, include any distribution by a company of accumulated profits, which entails releasing any assets by the company to its shareholders. In terms of Explanation 2 to of the said Act, the expression accumulated profits includes all company profits up to the date of distribution or payment thereof. It appears that the transfer of profits of Petitioner to IDBI in terms of Section 29(2) of SIDBI Act entails payment by Petitioner to IDBI. This payment or distribution of Petitioner's liquid assets constitutes dividend distributed by Petitioner out of its accumulated profits as envisaged under of the IT Act.

41. Registry to place the proceedings before the Hon'ble the Chief Justice for constitution of a Larger Bench to answer the aforesaid questions. (AARTI SATHE, J.) (G. S. KULKARNI, J.)