| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2644/Kol/2018
Assessment Year: 2014-15

Assistant Commissioner of Income Tax, Circle-7(1), Kolkata	Vs	**M/s. Britannia Industries** 5/1A, Hungerford Street Kolkata - 700017 **[PAN: AABCB2066P]**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

C.O. No. 09/Kol/2020
Assessment Year: 2014-15

M/s. Britannia Industries 5/1A, Hungerford Street Kolkata - 700017 **[PAN: AABCB2066P]**	Vs	**Assistant Commissioner of Income Tax, Circle-7(1), Kolkata**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri N.S. Saini, A/R
Revenue by :	Shri Abhijit Kundu, CIT, D/R and Shri G. Hukugha Sema, CIT, D/R

सुनवाई की तारीख/**Date of Hearing : 25/09/2023**
घोषणा की तारीख /**Date of Pronouncement: 27/10/2023**

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The appeal in ITA No. 2644/Kol/2018, has been filed by the revenue directed against the order of the Learned Commissioner of Income Tax (Appeals) - 22, Kolkata (hereinafter 'the ld. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act'), dt. 25/09/2018, for Assessment Year 2014-15.

The assessee has filed a cross-objection bearing C.O. No. 09/Kol/2020, against the appeal filed by the revenue.

2. The Registry has pointed out that there is a delay of 355 (three hundred fifty five) days in filing the cross-objection by the assessee. Petition for condonation of delay is placed on record by assessee explaining the reasons. On perusing the same, we are convinced that the assessee was prevented by sufficient cause from filing this appeal in time. Accordingly, we condone the delay and proceed to admit the cross objection for hearing.

3. The revenue has raised the following grounds of appeal:-

> *"1. Whether on the facts and circumstance of the case, the Ld. CIT(A) has erred in law as well as in (facts in deleting the adjustment made by the AO/TPQ amounting to Rs. 4,34,42,803/- for International transaction in respect to the corporate guarantee to it's AE & in deleting the adjustment made by the AO/TPO amounting to Rs. 3,09,32,411/- for International transaction on royalty Income.*
>
> *2. Whether on the facts and circumstance of the case, the Ld.CIT (A) has erred in law as well as facts to direct to re-compute the amount of disallowance u/s 14A.*
>
> *3. Whether on the facts and circumstance of the case, the Ld.CIT(A) has erred in law as well as in facts in allowing VAT subsidy of Rs.23.89 crores as Capital Receipt received by the assessee company.*
>
> *4. Whether on the facts and circumstance of the case, the Ld. CIT(A) has erred in law as well as in facts in allowing relief given on account of taxation of STCG at concessional rate on account of sale of depreciable Fixed Assets.*
>
> *5. The appellant craves leave to add, alter, amend or modify any or all grounds of appeal at or before the time of hearing of the appeal."*

4. The assessee has raised the following grounds of appeal in its cross-objection:-

> *"1. For that on the facts and in the circumstances of the case, the AO be directed to allow the deduction for Cess of Rs.5,21,79,612/- paid by the assessee for the A.Y. 2014-15.*
>
> *2. For that on the facts and in the circumstances of the case, the AO be directed to compute the tax payable by the assessee u/s 1150 of the Income Tax Act at the rate prescribed in the Agreement for Avoidance of Double Taxation between*

India & U. K. and India & Singapore in respect of dividend paid by the Company to its principal shareholders who are tax residents of the U. K. & Singapore respectively.

3. For that on the facts and in the circumstances of the case, the AO be directed to allow the deduction for amortization of payment for upfront lease premium for factory land of Rs.33 lacs for the A.Y. 2014-15.

4. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

5. Facts in brief are that the assessee is a public limited company and is engaged in the business of manufacturing and trading of bakery and dairy products. Income of Rs. 481,71,62,790/- declared in the return for Assessment Year 2013-14 filed on 29/11/2014. Case selected for scrutiny through CASS and notices u/s 143(2) and 142(1) of the Act. The ld. Assessing Officer noticed that the assessee has entered into certain international and specific domestic transactions and Form No. 3CEB has been submitted. The case was referred to the TPO u/s 92CA(3) of the Act for formation of ALP. The ld. Assessing Officer/TPO vide order dt. 27/10/2017 made upward adjustment towards corporate guarantee fee at Rs. 4,34,42,803/- and royalty income at Rs.3,09,32,411/-. The ld. Assessing Officer while completing the assessment made the aforesaid two additions. Apart from the above two issues, the ld. Assessing Officer also denied the claim of capital receipt of VAT subsidy at Rs.23,88,62,511/- observing that the assessee had himself stated it to be a revenue receipt and thereafter has claimed the same as a capital receipt during the course of assessment proceedings, however, the same is to be treated as the

revenue receipts as there is a direct nexus of the VAT subsidy with the revenue generated and, thus made the addition thereto. The ld. Assessing Officer also made disallowance u/s 14A of the Act applying Rule 8D of the Income Tax Rules, 1962 (hereinafter 'the Rules'). The ld. Assessing Officer further noticed that during the year assessee has shown short term capital gain of Rs. 9,21,75,000/- and while examining the capital gain it was observed that the assessee has paid taxes treating it to be long term capital asset and paid concessional tax rate as provided u/s 112 of the Act. Income assessed at Rs.519,61,39,830/-.

5.1. Aggrieved the assessee preferred appeal before the ld. CIT(A) and partly succeeded.

6. Aggrieved revenue is now in appeal before this Tribunal and the assessee has raised cross-objections on the grounds as extracted *supra.*

First, we will take up the revenue's appeal in ITA No. 2644/Kol/2018.

7. Ground No. 1, is raised against the deletion of adjustment made by the Assessing Officer/TPO towards corporate guarantee to its AE at Rs. 4,34,42,803/- and towards royalty income at Rs.3,09,32,411/-.

7.1. So far as the issue of corporate guarantee fee addition is concerned, at the outset, the ld. Counsel for the assessee submitted that so far as the issue of corporate guarantee fee is concerned, the same is squarely covered in favour of the assessee by the decision of this Tribunal in the assessee's own case in *Britannia Industries Limited v.*

DCIT (ITA No. 745/Kol/2017) [96 taxmann.com 430], wherein the Hon'ble Tribunal has held that corporate guarantee fee @ 0.25 per cent should be considered as ALP. The ld. A/R further submitted that in the instant year, the assessee has shown corporate guarantee fee income @ 0.30% which is higher than 0.25% rate as held by this Tribunal and, therefore, as per the Rule of consistency as held by the Hon'ble Apex Court in the case of *Parashuram Pottery Works Co. Ltd. vs. Income-tax Officer* reported in *[1977] 106 ITR 1 (SC)*, claim of assessee needs to be accepted.

7.2. On the other hand, the ld. D/R, though vehemently argued referring to the written submissions dt. 31/08/2021, placing reliance on various decisions in order to support the addition made by the Assessing Officer, however, he failed to controvert that the facts in the instant case are similar to that for Assessment Year 2012-13 and this Tribunal has already taken a view in assessee's own case holding corporate guarantee fee @ 0.25% to be reasonable.

8. We have heard rival submissions and perused the material placed before us. The revenue has raised the issue of deletion of addition of corporate guarantee fees. We notice that the assessee has granted corporate guarantee to Royal Bank of Scotland and Bank of America in favour of its associate enterprise M/s. Bank of Britannia and Associates (Mauritius) Pvt. Ltd. (BAMPL). The issue with regard to ALP of the said transaction has been the subject matter of transfer pricing proceedings in the preceding years also. We find that based on

the facts of Assessment Year 2012-13, the ld. TPO issued a showcause notice to assessee for Assessment Year 2014-15 as to why a corporate guarantee fee of 3% should not be applied for Assessment Year 2014-15. We, find that this Tribunal in the assessee's own case for Assessment Year 2012-13 has restricted the addition of corporate guarantee fee @ 0.25% as against 3% made by the Assessing Officer/TPO. Under similar set of facts, we find that in the instant year, assessee had already offered income of Corporate guarantee fee @ 0.30% which is higher than 0.25% as held by the Tribunal for Assessment Year 2012-13 and, therefore, taking consistent view, we fail to find any inconsistency in the finding of the ld. CIT(A), who has deleted the impugned addition observing that there being no change in the factual matrix during the year and the guarantee fee have been charged at a rate higher than 0.25% which was held to be ALP of this transaction by this Tribunal in the assessee's own case for Assessment Year 2012-13. Thus, no interference is called for in the finding of the ld. CIT(A) and issue is decided against the revenue.

10. Another issue which has been raised in Ground No. 1 relates to deletion of adjustment for royalty income. Ld. Assessing Officer/TPO has made upward adjustment for royalty income on account of licensing of trade name from associate enterprise Strategic Food International Company LLC, Dubai (in short 'SFIC Dubai'). The assessee while expanding its operation in foreign countries, primarily in the middle east, made strategic investment in SFIC Dubai, which is

also engaged in manufacturing and marketing of bakery products. For use of the assessee's brand name Britannia, assessee entered into a royalty agreement with SFIC Dubai on 16/11/2017, wherein the assessee agreed to grant a non-exclusive license to SFIC, Dubai to use trademark and in consideration thereof, SFIC, Dubai was required to pay 5% of the net sales value of products sold under the Britannia trademark. The said agreement dt. 16/11/2017 was subsequently renewed on 04/03/2012. The assessee has shown royalty income from SFIC at Rs.7,83,53,105/-. As claimed by the assessee in Form 3CEB, the ALP of royalty income is Rs.5,65,43,729/- has been computed @ 11.30% i.e., weighted average cost of capital method (WACC) on brand value of Rs.50.04 Crores. The claim of the assessee is that it has shown income higher than the ALP computed on the basis of weighted average cost of capital method. On the other hand, when the matter was referred to the ld. TPO, he referred to the OECD guidelines to support its case that the cost of equity is a better benchmark than WACC. The ld. TPO in its order has taken the basis of equity share price of the company from April to March for last ten years and concluded that the average monthly return is 1.82%, in other words, the annual return is 21.84% and this being the return on the equity should have been applied on the brand value and accordingly computed the ALP of royalty income at Rs.10,92,85,516/- and after reducing the royalty income offered by the assessee, made the adjustment for remaining amount of Rs.3,09,32,411/-.

10.1. When the assessee challenged the said adjustment before the ld. CIT(A) stating that as per OECD guidelines, weighted average cost of capital method is widely and universally accepted parameter to value the intangible assets and since the assessee had already offered higher income from royalty then the one computed as per WACC, no upward adjustment is called for the ld. CIT(A) considering the submissions of the assessee as well as also taking the basis of royalty rates of other concerns engaged in similar type of activity in the FMCG sector as well as other sectors, observed that royalty income offered by the assessee is better than the average of royalty income offered by various concerns in similar sectors. The ld. CIT(A) also noticed that the assessee has been consistently showing royalty income @ 5% for the preceding year i.e., Assessment Years 2009-10 to 2013-14. The ld. TPO in its order passed u/s 92CA(3) of the Act, had never found any infirmity either in terms of agreement or in Functional Asset and risk (FAR) analysis concerning royalty receipts. The ld. CIT(A) thus held that the TPO erred in departing from accepted basis and no determining the ALP @ 21.84% of the brand value of Rs.50.04 Crores.

11. Aggrieved, the revenue is now in appeal before this Tribunal.

11.1. The ld. D/R vehemently argued supporting the order of the ld. Assessing Officer and also referred to the written submission stating that OECD guidelines recognised the fact that intangible parts are riskiest components of the business and that weighted average cost of capital method cannot be applied in a blanket matter in each and every

case. The ld. D/R further submitted that WACC is applied to value the business as a whole and the same cannot be applied to value intangibles which on a standalone basis is considered riskiest than the business as a whole. Further referring to the annual report of the company stated that the company is working on new products and also improving existing products through packaging and marketing.

11.2. On the other hand, the ld. Counsel for the assessee referring to the written submission filed on 21/08/2021 mainly stated that WACC involves determination of each component of enterprise's capital viz., equity, debt, preferred stock etc. It is an ideal measure of the expected rate of return, as the cost of equity considers the 'Beta' of the company which implies the volatility or riskiness of a stock relative to all other stocks in the market. The weighted average cost of capital method, thus capture the risk of the subject business itself and is, therefore, normally applied across all business valuations. He further submitted that the ld. TPO erred in taking the basis of cost of equity return i.e., value of equity shares and the same should not be considered for determining the ALP. Capital structure of the assessee company comprises of long term loan borrowings. Lastly it was stated that the revenue authorities have accepted the ALP as per the auditor's report in Form 3CEB disclosed in Assessment Year 2008-09 to 2013-14 and subsequently from Assessment Year 2015-16 to 2018-19 and only for the year under consideration this issue has been raised.

12. We have heard rival contentions and perused the material placed before us. The issue raised by the revenue relates to deletion of upward adjustment of royalty income by the ld. CIT(A). The assessee entered into a royalty agreement with its AE SFIC, Dubai and has been showing royalty income rate @ 5% of sales value of the products at Rs.156.71 Crores (approx.) sold by its AE. For the year under consideration, royalty income of Rs.7,83,53,105/- has been declared. In the Form 3CEB, ALP has been computed on the basis of weighted average cost of capital method at 11.30% applied on the brand value of Rs.50,03,91,559/- and the same being computed at Rs. 5,65,43,729/-. The ld. TPO has computed the ALP applying cost of equity, taking into consideration the equity share prices of the company for the last ten years computed at 1.82% per month thereby computing the ALP of the said transactions @ 21.84% of the brand value of Rs.50.04 Crores (approx) at Rs.10,92,85,516/-. Reference has been made to the OECD guidelines. So far as para 6.170 to 6.172 of the OECD guidelines is concerned, the same is reproduced below:-

> *"6.170 The discount rate or rates used in converting a stream of projected cash flows into a present value is a critical element of a valuation model. The discount rate takes into account the time value of money and the risk or uncertainty of the anticipated cash flows. As small variations in selected discount rates can generate large variations in the calculated value of intangibles using these techniques, it is essential for taxpayers and tax administrations to give close attention to the analysis performed and the assumptions made in selecting the discount rate or rates utilised in the valuation model.*
>
> *6.171 There is no single measure for a discount rate that is appropriate for transfer pricing purposes in all instances. Neither taxpayers nor tax administrations should assume that a discount rate that is based on a Weighted Average Cost of Capital (WACC) approach or any other measure should always be used in transfer pricing*

analyses where determination of appropriate discount rates is important. Instead the specific conditions and risks associated with the facts of a given case and the particular cash flows in question should be evaluated in determining the appropriate discount rate.

6.172 It should be recognised in determining and evaluating discount rates that in some instances, particularly those associated with the valuation of intangibles still in development, intangibles may be among the most risky components of a taxpayer's business. It should also be recognised that some businesses are inherently more risky than others and some cash flow streams are inherently more volatile than others. For example, the likelihood that a projected level of research and development expense will be incurred may be higher than the likelihood that a projected level of revenues will ultimately be generated. The discount rate or rates should reflect the level of risk in the overall business and the expected volatility of the various projected cash flows under the circumstances of each individual case."

12.1. From perusal of the above guidelines, we notice that it has nowhere been suggested that Weighted Average Cost of Capital (WACC) method should not be applied for the purpose of computing ALP of royalty income. It is an admitted fact that brand value needs consistent research and development and regular investment because a mistake at any point of time could reduce the value of a brand drastically. Even in the OECD guidelines it has been pointed out that, it should be recognised in determining and evaluating discount rates that in some instances, particularly those associated with the valuation of intangibles still in development, intangibles may be among the most risky components of a taxpayer's business. The ld. TPO/Assessing Officer had adopted an analogy that the brand value is well established from many years and is not a risky intangible and, therefore, WACC cannot be applied. We fail to find any merit in such observation of the ld. TPO/Assessing Officer because maintaining of a

brand is a consistent activity and to maintain a brand value is always a risky task and a small mistake at the end of the assessee or its AE can damage the brand value drastically. Therefore, since it is a risky intangible and there is a cut throat competition in such field, WACC method is a suitable method for the purpose of computing ALP of royalty income under the given facts and circumstances of the case. Since the assessee has offered royalty income higher than the ALP computed by applying WACC of 11.30% of the brand value, no further upward adjustment is called for. It is also noteworthy that assessee has been consistently showing royalty income since Assessment Year 2008-09 to 2013-14 and the same has never been disputed by the revenue authorities and even in the subsequent years also the same has not been disputed. Therefore, no interference is called for in the finding of the ld. CIT(A) and the grounds raised by the revenue is dismissed.

12.2. Next issue for our consideration is disallowance u/s 14A of the Act. The ld. Assessing Officer made disallowance at Rs. 41,61,314/- by applying Rule 8D(2)(iii) of the Rules @ 0.5% of the average investment after giving benefit of *suo moto* disallowance of Rs. 5,74,186/- by the assessee. When the matter came up before the ld. CIT(A), he in view of the judgment of the Hon'ble Jurisdictional High Court in the case of *Commissioner Of Income Tax vs M/S Ashika Global Securities Ltd on 11 June, 2018, ITAT 100 of 2014 GA 2122 of 2014*, directed the Assessing Officer to re-compute the amount only with respect to average cost of

pending closing stock statement which actually yielded exempt income.

12.3. Aggrieved the revenue is now in appeal before this Tribunal.

12.4. The ld. D/R supported the order of the ld. Assessing Officer and the ld. Counsel for the assessee relied on the order of the ld. CIT(A).

13. We have heard rival contentions and perused the material available on record.

14. We notice that the assessee had offered disallowance of *suo moto* disallowance of Rs. 5,74,186/- u/s 14A of the Act. The dividend income earned during the year from investment in shares and units of mutual funds is Rs.11,34,497/-. The ld. Assessing Officer in terms of Rule 8D(2)(iii) computed the amount @ 0.5% of the average investment irrespective of any bifurcation whether the investments have given rise to exempt income or not. We further notice that the ld. CIT(A), applying the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *M/s. Ashika Global Securities Ltd (supra)* has directed the Assessing Officer to recomputed the amount by applying the rate of 0.5% on only those average investment which actually yielded dividend income. We fail to find any infirmity in this finding of the ld. CIT(A) directing to recomputed the disallowance. Accordingly Ground No. 2 raised by the revenue is dismissed.

15. Ground No. 3 of the revenue relates to VAT subsidy of Rs.23.89 Crores which has been held by the Assessing Officer as revenue

receipt but the ld. CIT(A) deleted the said addition holding it to be a capital receipt.

16. The ld. D/R vehemently argued supporting the order of the ld. Assessing Officer. On the other hand, the ld. Counsel for the assessee heavily relied on the finding of the ld. CIT(A).

17. We have heard rival contention and perused the material placed before us. The issue before us whether the VAT subsidy received by the assessee during the year is a capital receipt or revenue receipt. During the year the assessee received incentive amount from State Governments of Bihar and Odisha, towards subsidy. As per the Industrial policy of Government of Bihar and Government of Odisha, assessee was granted incentive in the form of reimbursement of VAT/sales tax. The ld. CIT(A) dealt with this issue referring to the various judicial pronouncements and held in favour of assessee by placing reliance on the judgment of the Hon'ble Supreme Court in the case of *CIT v/s. Chaphalkar Brothers Pune [2018] 400 ITR 279* as well as that of the Hon'ble Jurisdictional High Court in the case of *CIT vs Rasoi Limited [2011] 335 ITR 438 (Cal) (HC).*

17.1. On going through the above, and judicial precedents referred in the impugned order and after perusal of the Industrial policies of the Governments of Bihar and Odisha, we find that firstly introduction of amendment in Section 2(24)(xviii) of the Act is prospective in nature and applicable from Assessment Year 2016-17 and onward. Secondly, so far as the nature of the subsidy is concerned, the alleged incentive

was assured under the Industrial policy for the purpose of encouraging the assessee to set up new industries in the State. We find that the objective contained in the Industrial policy was not to reduce operation costs of the company or facilitate working of existing undertaking. Therefore, in our view, the subsidy received in form of VAT reimbursement from the State Governments was towards industrialisation in the State and to generate employment and, therefore, the entrepreneurs with the attraction of such subsidy (VAT Subsidy) plan to establish and commence business operations in such areas and for establishing such business has to make capital expenditure in the form of land, building, plant and machinery and such investments are partly reimbursed by the subsidies granted by the State Governments. Therefore, the alleged subsidy has been rightly held to be capital receipt by the ld. CIT(A) which thus calls for no interference. Ground No. 3 of the revenue is dismissed.

18. Ground No. 4 of the revenue's appeal relates to applicability of rate of tax on the assets sold by the assessee during the year on the depreciable assets. The facts of the issue are that the assessee has sold certain depreciable fixed assets which were held by it for more than three years. Capital gain arising from such sale has been offered to tax @ 20% as provided u/s 112 of the Act. The ld. AO observed that the alleged gain is short term capital gain as per the provisions of Section 50 of the Act and, therefore, the concessional rate of tax u/s 112 of the Act cannot be applied and normal tax rate has to be paid on such gain.

The ld. CIT(A) granted relief based on certain decisions. Before us, the ld. D/R supported the order of the ld. Assessing Officer and the ld. Counsel for the assessee apart from supporting the order of the ld. CIT(A) has also referred to the certain judicial precedents.

19. We have heard rival contentions and perused the record placed before us. The issue for our consideration is whether the depreciable asset used for business and part of block of asset if held for more than three years and sold then whether such gain is liable to be taxed as per the tax rates applicable for long term capital gain from sale of long term capital asset. There is no dispute to the fact that the assessee had sold depreciable assets forming part of the block of assets and they were held for more than three years. We notice that Section 50 of the Act is a special provision for computation of capital gain in case of sale of depreciable assets and it provides that notwithstanding anything contained in clause 2(24)(xviii) of the Act, where the capital gain is from an asset forming part of the block of asset in respect of which depreciation has been allowed then subject to certain conditions, the capital gain arising from such transfer is deemed to be a short term capital gain.

20. Section 112 of the Act which provides for concessional rate of tax on long term capital gain is only applicable on transfer of long term capital asset. The long term capital asset is defined under Section 2(29A) of the Act **as capital asset which is not a short-term capital asset**. However, since special provision is provided under the Act for

computation of capital gain on depreciable assets u/s 50 of the Act and it starts with the line *Notwithstanding anything contained in clause (42A) of section 2*….., we are of the considered view that the depreciable asset which forms part of the block of asset even if held for more than three years cannot be brought under the category of long term capital asset for the purpose of concessional rate of tax. Under these given facts and circumstances, we are of the considered view that the alleged gain during the year from sale of depreciable fixed asset is a short term capital gain and is liable for levy of tax at normal tax rates and not under special rate provided u/s 112 of the Act. Thus, Ground No. 4 of the revenue is allowed.

21. Ground No. 5 is general in nature.

22. **Now, we take up the grounds raised in the Cross-objection No. 09/Kol/2020 filed by the assessee.**

23. Ground No. 1 relating to the claim of education cess as an business expenditure has not been pressed and the same is dismissed as not pressed.

24. Ground No. 2 relates to taxability of dividend distribution of non-residents as per rate provided in the agreement for avoidance of double taxation between India & U.K.

24.1. We notice that the assessee filed a detailed written submission to this effect in support of its grounds. The Special bench of the Tribunal in the case of *DCIT vs. Total Oil India Pvt. Ltd. in ITA No.*

6997/Mum/2019 and other cases, order dt. 20/04/2023, while dealing with similar issue has concluded as follows:-

> *"83. For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts Additional Income Tax (Tax on Distributed Profits) referred to in Sec.115-O of the Act, such additional income tax payable by the domestic company shall be at the rate mentioned in Section 115 O of the Act and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income. Nevertheless, we are conscious of the sovereign's prerogative to extend the treaty protection to domestic companies paying dividend distribution tax through the mechanism of DTAAs. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered, accordingly."*

25. Respectfully following the same, we are of the view that the dividend distributed by the assessee during the year is liable to be taxed as per the provision of Section 115O of the Act, irrespective of the fact whether such dividend is distributed to resident or non-residents. Thus, Ground No. 2 is dismissed.

26. Ground No. 3 relates to claim of deduction for amortization of payment. Both the lower authorities have denied the said claim. We, however, find that the Hon'ble Jurisdictional High Court in the case of *Balmer Lawrie & Co. Ltd Vs CIT, Kol.-II reported in (2019) 111 taxmann.com 316 (Calcutta)* has held that upfront lease premium on lease-hold land is nothing but advance payment of rent and the same is not a capital expenditure and as such the deduction should be allowed u/s 37(1) of the Act. Considering the said judgment which is squarely applicable on the fact of this case, we are inclined to hold in

favour of the assessee and direct the Assessing Officer to allow the claim of deduction for lease premium of Rs. 33,00,000/- for Assessment Year 2014-15. Accordingly Ground No. 3 of the cross-objection is allowed.

27. Ground No. 4 is general in nature.

28. In the result, appeal of the revenue in ITA No. No. 2644/Kol/2018 is partly allowed for statistical purposes and the cross-objection filed by the assessee in C.O. No. 09/Kol/2020 is partly allowed.

Order pronounced in the Court on 27th October, 2023 at Kolkata.

Sd/-	*Sd/-*
(SONJOY SARMA)	**(DR. MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Kolkata, Dated 27/10/2023
SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,**आयकर अपीलीय अधिकरण,** कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata