

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4671/Mum/2023  
(Assessment Year :2020-21)**

**ITA No.4672/Mum/2023  
(Assessment Year :2019-20)**

**&  
ITA No.4671/Mum/2023  
(Assessment Year :2018-19)**

|                                                                                                                                               |     |                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------|
| Polycab India Limited<br>29, The Ruby, 21 <sup>st</sup> Floor<br>Senapati Bapat Marg<br>Tulsi Pipe Road<br>Dadar West<br>Maharashtra- 400 028 | Vs. | The Assistant Commissioner<br>of Income Tax, Circle 5(2)<br>Mumbai |
| <b>PAN/GIR No.AAACP6474E</b>                                                                                                                  |     |                                                                    |
| <b>(Appellant)</b>                                                                                                                            | ..  | <b>(Respondent)</b>                                                |

|                              |                                                                |
|------------------------------|----------------------------------------------------------------|
| Assessee by                  | Shri Rajan Vora & Shri<br>Pranay Gandhi and Shri<br>Lekh Mehta |
| Revenue by                   | Shri Krishna Kumar, Sr. DR                                     |
| <b>Date of Hearing</b>       | <b>12/06/2025</b>                                              |
| <b>Date of Pronouncement</b> | <b>16/06/2025</b>                                              |

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeals have been filed by the assessee against separate impugned orders of consolidated dated

23/10/2023 passed by Id. CIT (A)-53, Mumbai in relation to order passed u/s. 237 of the Act for the A.Yrs.2018-19, 2019-20 and 2020-21.

2. Since issues involved in all the appeals are common, therefore, same have been disposed of by way of this consolidated order.

3. In all the appeals, the common grounds raised are as under:-

1. *erred in confirming the action of the AO in rejecting refund claimed by Appellant in respect of the dividend distribution tax (DDT) paid under section 115-0 of the Act, on dividend paid to the International Finance Corporation (IFC) which is not subjected to tax on account of immunity granted under section 9 of Article VI of the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (IFC Act, 1958);*

2. *erred in not appreciating the fact that the DDT under section 115-0 of the Act, is a tax on the dividend Income earned by the shareholder and therefore, the same is not applicable to IFC since its entire income is immune from taxation in India,*

3. *erred in holding that DDT has to be borne by the company and has no relation with the status of the shareholding without appreciating the facts of the case and law in force;*

4. *erred in not appreciating that the IFC Act, 1958, has been notified in "the Gazette of India" by the Government of India pursuant to the International Finance Corporation Agreement and the same ought to have been honoured while levying the tax on transactions entered by IFC*

5. *erred in disregarding the fact that the IFC Act, 1958, provides blanket immunity from levy of any tax in India on the assets, property, income, operations and transactions pertaining to the IFC and thereby DDT, being tax on dividend ought not be levied on dividend paid to shareholders, being IFC, and 6 erred in not*

*appreciating that duty of the tax authorities is to determine correct tax leviable on the transactions as per the law in force.*

4. Ergo, the sole issue involved is whether Id. AO is justified in claiming the refund in respect of dividend distribution tax paid u/s.115-O(1) on dividend paid to international finance corporation which has the immunity under the Income Tax Act by virtue of Section 9 of Article VI of the International Finance Corporation Act (IFC), 1958.

5. The brief facts of the case are that Assessee Company is a public listed company engaged in the business of manufacturing and selling of cables, wires and fast moving electrical goods. One of the share holder of the Assessee Company was International Finance Corporation (IFC) which had 15% equity shares in the assessee company in A.Y.2018-19; and in A.Y.s 2019-20 and 2020-21, the shareholding of IFC in the assessee company was 9.50% and 9.48%.

6. IFC is a World Bank group a body headquartered in Washington. It is one of the largest global development institution focused exclusively on the private sector helping, developing countries achieve sustainable growth by financing investment, mobilizing capital in international financial markets, and providing advisory services to businesses and governments. IFC was established in the year 1956 under an agreement entered by and between different countries. India was one of the signatory to this agreement and has also subscribed to the share capital of IFC. Since it was an international agreement, the member Countries including India formulated domestic law to

give effect to the IFC agreement. The Parliament of India passed the IFC Act, 1958 for the purpose of implementation of agreement dated 20/07/1956 under which agreement dated 20/07/1956 under which IFC was established. Further, IFC Act amongst others was to provide certain immunities for which in principle understanding aims at providing certain immunities for which in principle understanding was reached in **Article VI of IFC agreement. Article 3 of the IFC Act, 1958**, has an effect of overriding all the existing laws of India. Further, provisions of **section 9 of Article VI of the IFC Act, 1958**, grants Immunity to IFC from all applicable taxation on its assets, property, Income, operations and transactions. Relevant provisions are reproduced as under:

*"3. (1) Notwithstanding anything to the contrary contained in any other law, the provisions of the Agreement set out in the Schedule shall have the force of law in India:*

### **SECTION 9. Immunities from Taxation**

*(a). The Corporation, its assets, property, Income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all custom duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.....*

Ergo, by virtue of the IFC Act, 1958, IFC has immunity from, all taxation, on its assets, property, Income and its operations and transactions.

7. During the A.Y.2018-19, assessee had declared dividend of Rs.1 per equity share on 03/07/2018 and deposited dividend distribution tax on such dividend as per the provisions of Section 115O @20.36%. The details of dividend and DDT details for the A.Y. 2018-19 are as under:-

| Particulars        | FY 2017-18   |             |
|--------------------|--------------|-------------|
|                    | Total        | IFC         |
| No of Shares       | 14,12,05,838 | 2,11,76,446 |
| Shareholding (%)   | 100.00%      | 15.00%      |
| Dividend per share | 1            | 1           |
| Dividend paid      | 14,12,05,838 | 241,76,446  |
| DDT rate (%)       | 20.36        | 20.36       |
| DDT deposited      | 2,87,46,186  | 43,11,026   |
| Refund amount      |              | 43,11,026   |

8. Similarly for AY 2019-20 and AY 2020-21, the details of dividend and DDT are as under:-

| Particulars      | FY 2018-19   |             |
|------------------|--------------|-------------|
|                  | Total        | IFC         |
| No of Shares     | 14,86,45,905 | 1,41,16,154 |
| Shareholding (%) | 100.00%      | 9.50%       |

|                    |              |                  |
|--------------------|--------------|------------------|
| Dividend per share | 3            | 3                |
| Dividend paid      | 44,59,37,715 | 4,23,48,462      |
| DDT rate (%)       | 20.56        | 20.56            |
| DDT deposited      | 9,16,63,809  | <b>87,04,851</b> |
| Refund amount      |              | <b>87,04,851</b> |

| Particulars        | FY 2019-20     |                    |
|--------------------|----------------|--------------------|
|                    | Total          | IFC                |
| No of Shares       | 14,88,79,373   | 1,41,16,154        |
| Shareholding (%)   | 100.00%        | 9.48%              |
| Dividend per share | 7              | 7                  |
| Dividend paid      | 1,04,21,55,611 | 9,88,13,078        |
| DDT rate (%)       | 20.56          | 20.56              |
| DDT deposited      | 21,42,18,151   | <b>2,03,11,319</b> |
| Refund amount      |                | <b>2,03,11,319</b> |

9. The assessee filed an application and made a prayer u/s. 237 for the refund of DDT paid on the dividend paid to IFC on the ground that as per the provision u/s. 9 of Article VI of IFC Act, IFC has granted immunity for all applicable taxation on these assets, property or income and the provisions of IFC Act as in effect of overriding of the existing all the existing laws of India.

After relying upon various judicial decisions it was claimed that refund to be granted on the DDT amount paid with respect to dividend distributed to IFC.

10. However, ld. AO rejected assessee's application holding as under:-

*"The above contention of the assessee is considered, however, found to be devoid of merits. It is pertinent to mention that Income Tax Act, 1961 identifies taxpayers with different legal status. Further, a company can have several shareholders having different legal status. It is pertinent to mention that, Charitable Trusts/Government Organizations are exempt from Income Tax Act, subject to various provisions. However, when a trust held shares of a company issuing dividend, the said Income is also not taxable to such Trust. However, if the contention of the assessee is considered to be acceptable then even DDT paid for charitable Trusts or Govt. organizations shareholders will have to be refunded to the companies issuing dividend. Had this been the intention of the Act, then it would have been introduced in the Act to analyze the tax status/exempt status of each shareholder and accordingly pay DDT. However, the intent of the Act is clear and therefore even in ITR there is no differentiation made between shareholders based on their tax status/exempt status under Schedule DDT in ITR-VI. The chargeability of tax u/s 115-0 in the hands of the assessee is exclusive of the taxability of such income in the hands of recipient*

*In view of the above, I am not satisfied with the contention of the assessee company and therefore I reject the application under section 237 of the IT Act, 1961."*

11. Before ld. CIT (A) assessee made detailed submissions which has been dealt and incorporated in the impugned order. Ld. CIT (A) too has rejected assessee's contention relying upon the decision of **ITAT Special Bench in the case of Total Oil India Pvt. Ltd., reported in (2023) 149 taxmann.com 332**, the



relevant observation of the Id. CIT(A) referring to the decision of the Special Bench are as under:-

5.9. The Hon'ble Mumbai ITAT Special Bench in the case of Total Oil India P Ltd dated 20.04.2023 [2023] 149 taxmann.com 332 (Mumbai Trib.) (SB) held that dividend distributed by a domestic company to a non-resident shareholder to which provisions of section 115-0 of the Act apply, shall be subject to Dividend Distribution Tax and taxable at the rate mentioned in section 115-0. The Hon'ble Special Bench has held that section 115-0 is a code and the non-obstante clause in the said section is an indication that the charge under this section is independent and not covered under the 'total income' under the Act. By virtue of this non-obstante clause, provisions of section 115-0 of the Act override provisions of all other sections of the Act including section 4 of the Act. Further, the Bench held that DDT is a charge to tax profits of the company and not a charge in the hands of the shareholder or tax paid on behalf of the shareholder by the domestic company. The Bench relied on the Hon'ble Bombay High Court ruling in the case of Small Industries Development Bank of India vs CBDT, 440 ITR 80, that charge under section 115-0 of the Act is on the company's profits and not income in the hands of the shareholder. The Hon'ble Special Bench ruled that DDT is paid by the domestic company which is resident in India, and it is a tax on the income of the company and not tax paid on behalf of the shareholder, who is the recipient. Given this judicial finding, there is no need to elaborate the issue on any further Since the charge under section 115-0 of the Act is on the company's profits and not income in the hands of the shareholder, the contentions of the appellant fail L

5.10. One of the arguments of the case of Total Oil India P. Ltd dated 20.04.2023 [2023] 149 taxmann.com 332 (Mumbai -Trib.) (SB), reference was made to case of Total Oil India P Ltd in [2021] 127 taxmann.com 774 (Mumbai -Trib.) wherein reference to Indo Hungary DTAA was made. I am afraid, the appellant's arguments are devoid of merit Section 9 of the IFC (Status, Immunities and Privileges) Act, 1958 does not specifically refer to a scenario where the company makes DDT payment, quite unlike in the case of Indo-Hungary DTAA which is very specific to this point. Another contention of the appellant is that IFC is immune from taxation



and has to be read alike any other tax treaty entered by India. In my humble view, this argument is specious in nature. IFC would definitely be benefitted when dividend is taxable in the hands of recipient. But when the incidence of taxation is on the company, no such arguments can be canvassed. If the appellant's arguments were to be accepted, then it would lead to absurd situations wherein DDT liability will keep on changing depending on the shareholders, which is clearly not what is laid down in the provisions of the Act.

5.11. To understand better, let's visualize two scenarios where a company has declared dividend of Rs.1,000.

| Particulars         | Scenario 1 | Scenario 2     |
|---------------------|------------|----------------|
| Gross Dividend paid | Rs.1,000   |                |
| DDT rate            | 15%        |                |
| DDT amount          | Rs. 150    |                |
| Shares held by IFC  | Nil        | 20% of capital |
| DDT as per assessee | Rs.150     | Rs. 120        |

In the scenario 2 referred above, several questions arise: Where is the provision in Act which states that taxation of the company changes with shareholding pattern? What will the company do with the savings of Rs.307 Will it pass this on to IFC separately as additional dividend to only one shareholder in contravention of Companies Act? Whether the immunity granted to IFC in respect of its tax liability can be subverted to enrich the appellant by Rs 30 and reduce its tax liability? The answer in my view, is a categorical NO

5.12. Let me take another hypothetical example. What if all the shareholders of a company are small retail shareholders with none of them having income above taxable limit and are also

*below the TDS limit? Will the company not be liable for DDT at all? Clearly, the answer is a NO. As long as incidence of taxation is on the company, the status of shareholder does not matter. When the Act / wordings of the Act do not envisage the status of shareholder to be taken into account for the purpose of DDT taxation, it would be an anathema to read words into them. The decision of Total Oil India P Ltd [2023] 149 taxmann.com 332 (Mumbai - Trib.) is fair and square to this extent.”*

12. We have heard both the parties at length, perused the relevant finding given in the impugned orders and the relevant provisions of the Income Tax as well as IFC Act, 1958. The principal contention advanced by Id. Counsel for assessee, Mr. Rajan Vora, rests upon the overriding of the IFC Act, 1958. Section 3 r.w.s. 9 of Article VI of the said Act overrides the Income Tax Act which grants immunity from levy of any form of tax in India on its assets, property, income, operations and transactions undertaken by IFC. He contended that such immunity is absolute and no exception is carved out for any indirect taxation including on dividend distribution would run contrary to the express statutory immunity accorded under the IFC Act. It is kind of breach of the Sovereign undertaking to give effect to India's international obligation which has been enshrined under the IFC Act. Here in this case, IFC has entered into transaction by making an equity investment in a domestic entity, namely, Assessee Company. Such an investment constitutes a transaction within the scope of IFC Act, 1958 and therefore any payment or distribution made to IFC pursuant to its investment like dividend would fall within the ambit of the immunity conferred under the said Act. Accordingly the assessee

company was not even required to pay DDT on the dividend paid to IFC. Mr. Vora submitted that once there is an overriding Act, then dividend paid to IFC does not require any specific exemption u/s.115O of the Act from levy of DDT and therefore, dividend paid to IFC ought to be excluded while computing the DDT liability.

13. Alternatively, he submitted that while computing the DDT liability, the dividend paid to IFC should be reduced in terms of sub-section (1A) of section 115O. His contention was based on the proposition that if the statute has stipulated that amount of dividend paid to any person for or on behalf of the new pension system trust referred to any Section 10(44) is to be reduced, then similar exemption of income which is also enjoyed by IFC by virtue of a separate statute should also be reduced. Accordingly, claim of the assessee should be allowed.

14. On the other hand, ld. DR submitted that, now whence the Hon'ble Special Bench of ITAT, Mumbai has held that charge u/s.115O is on the company's profits and not income in the hands of the shareholder then, where is the question of any refund. He submitted that Section 115O stipulates additional tax on the company if any amount is declared, distributed or paid by such company by way of dividend, then whether the income is taxable in the hands of the shareholder or shareholders income is exempt is not material or relevant. What is taxed is additional tax on profits of the company at the time of distribution of dividend and it is not tax in the hands of the shareholders. Thus,

this issue is squarely covered by the decision of the Hon'ble Special Bench in the case of Total Oil India Pvt. Ltd (supra).

15. As noted above, one of the shareholder of the assessee company is IFC which was established in the year 1956 under the agreement entered by in between different Countries and India was also signatory to this agreement and subscribed to its share capital to give effect to the international agreement. Signatory countries formulated their domestic law to give effect of the process of IFC agreement. The Parliament of India as it Sovereign commitment has passed IFC Act, 1958 to implement the agreement under which IFC was established which aim for providing certain immunities for which mutual understanding was reached in Article VI of IFC agreement. Section 3 of IFC Act (supra) has an effect of overriding all the existing laws in India. Further the provisions of Section 9 of Article VI of the IFC Act, 1958 grants immunity to the IFC from all applicable taxation on its assets, property, Income, operations and transactions. Even though Income Tax Act, 1961 came later, but the immunity provided under the IFC Act, 1958 will also prevail and will have the overriding effect of the Income Tax Act, 1961. Otherwise Section 9 of IFC Act granting immunities from taxation will become otiose. Thus, by virtue of IFC Act, 1958, the IFC have the immunity from *interalia* all taxation on these assets, property, income and its transactions.

16. The issue here is, whether the Indian company which is paying dividend to IFC is liable to pay DDT at the time of

distribution. Section 115O is a non-obstante clause that 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 out of current or accumulated profits shall be charged to additional income-tax at the prescribed rate. Thus, the company is liable to pay the DDT as additional tax at the time of declaration and distribution of dividend to the shareholders. To that extent the reasoning given by the Id. CIT (A) is accepted because the charge u/s.115O of the Act is on the company's profit.

17. However, the statute also provides that the amount paid for the dividend shall be reduced by the following amounts which have been provided in sub-section (1A) of section 115O which reads as under:-

*(1A) The amount referred to in sub-section (1) shall be reduced by,—*

*(i) the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,—*

*(a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or*

*(b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend:*

***Provided*** that the same amount of dividend shall not be taken into account for reduction more than once;

***(ii) the amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in clause (44) of section 10.***

18. The rationale for exemption of dividend paid to pension trust from applicability of u/s.115O of the Act has been given in the Explanatory Memorandum in the Finance (No.2) Act, 2009 was explained in the following manner:-

*"The National Pension System (NPS) was initially introduced for Central Government service from 1 January, 2004. Since then, it has been opened up for employees of State Governments, the private sector, and the self-employed (both organised and unorganised). The NPS Trust was set up on 27th February, 2008, under the provisions of the Indian Trusts Act, 1882, to manage the assets and funds under the NPS in the interest of the beneficiaries.*

*With a view to ensure that the tax treatment of savings under this system is synchronised with the "exempt-exempt-taxed" (EET) method, and that there is no incidence of taxation at the accumulation stage, it is proposed to make the NPS Trust a complete pass-through for tax purposes. Therefore, it is proposed to:*

*i) Insert a new clause (44) in section 10 of the Income-tax Act, so as to provide that any income received by any person on behalf of the New Pension System Trust established on 27th February, 2008 under the provisions of the Indian Trusts Act, 1882 shall be exempt from income tax,*

*(ii) Amend section 115-0 to provide that any dividend paid to the NPS Trust shall be exempt from Dividend Distribution Tax."*

19. Thus, clause (ii) provides for reduction of the amount of dividend paid to any person for, or on behalf of the New Pension System Trust covered u/s. 10(44). The reduction of the amount of dividend paid is because any income received by any person under the New Pension System Trust is exempt from tax. For example, if the gross dividend declared is Rs.1000/- out of which the dividend paid to pension trusts and IFC are Rs.100 each,

then DDT u/s.115O will be calculated on Rs.800/- (Rs.1,000 (-) Rs.100 (-) Rs.100). There are various other instances wherein, income of certain institutions such as the Reserve Bank of India, Securities Exchange Board of India, International Monetary Fund, World Bank Group, United Nations (alongwith its various bodies), etc. are exempt from levy of income tax because of the overarching provisions of the respective Acts of Parliament. Further, income of Reserve Bank of India is also exempted from the purview of Income Tax Act by virtue of Section 48(1) of the Reserve Bank of India Act, 1934 which states as under:-

*“1) Notwithstanding anything contained in the Income-Tax Act, 1961 (43 of 1961) or any other enactment for the time being in force relating to income-tax or super-tax, the bank shall not be liable to pay income-tax or super-tax on any of its income, profits or gains.”*

20. One important point to be noted here is that there is no specific provision under the Act due to the over-arching reach of the RBI Act.

21. Similarly, exemption to income of the Securities and Exchange Board of India, International Monetary Fund, United Nations (including its affiliated organizations) and the World Bank Group (of which IFC is a part) as well as exemption of tax on salaries paid to foreign national employees of such employees.

22. Similar provisions have been made in SEBI, IMF, UN (including its affiliated organizations) and the World Bank Group (of which IFC is a part) to grant exemption from income received by these organizations.



23. The Courts have held that the immunity available for salaries of employees of certain foreign institutions like UN, World Bank, etc. is also available to pensions received by such employees even in the absence of specific provisions under the Act

- Hon'ble Karnataka HC in case of K. Ramaiah (126 ITR 638)
- Hon'ble Delhi HC in case of Dr. P. L. Narula (17 Taxman 223)

24. From the above it can be inferred that when there is an agreement between the sovereign countries and diplomatic understanding which are codified as Act of the parliament that income of such institutions are exempted from tax then, there need not be any specific provisions in the Income Tax Act, 1961. Now taking cue from clause (ii) of Section 115O, if the statute specifically mandates that income accrued from New Pension System, being exempt under the Income Tax Act must be reduced from the quantum of dividend disbursed then by parity of reasoning and equitable statutory construction, its stands to reason that income received by the IFC under any format is likewise exempt from taxation ought to be accorded identical treatment. Even if Section does not specifically provides for reducing the amount of dividend paid to IFC but under the overall scheme of overriding effect of the IFC Act, the principle enshrined clause (ii) of sub section (1A) of section 115 O can be applied for the legislative intent and it would be quite consistent with the statutory interpretation. We are not transposing from

the principles laid down by the Special Bench in the case of Total Oil India Pvt. Ltd., and we agree with the contention of the Ld. DR that dividend distribution companies have to pay DDT u/s. 115O (1) of the Act, which is an additional tax on the company at the point of dividend disbursement, rather than as a tax on the recipient shareholder *per se*. However, nuanced and purposive reading of the statute reveals that this levy of tax is not intended to apply indiscriminately, particularly in case where recipient IFC enjoys unequivocal statutory immunity from taxation in India. Where the shareholder in question is cloaked with comprehensive exemption under the Income Tax Act, then such exemption is not merely limited to income but it extends in its full amplitude to the IFC's assets, property, operations, transactions and all manifestation of financial activity. The denial of reduction of the amount of dividend paid to IFC from the computation of the amount of dividend paying company will lead to anomaly as the company is paying additional tax on the dividend paid to an entity which is beyond the taxing ambit in India. To permit taxation of a transaction vis-à-vis wholly taxed immune entity, even indirectly on the dividend disbursing company will violate the legislative intent that enshrines such immunity. Thus, Sub-Section 1A of Section 115O assumes particular salience, as it expressly contemplates the reduction of amounts paid to exempt entities from the dividend amount liable to be DDT. Any construction to the contrary would amount to penalising compliance for statutory exemption and alien to taxation laws and purposive interpretation. Accordingly, we hold

that dividend paid to entities enjoying absolute immunity under the Income Tax Act such as international multinational institutions such as IFC which has been accredited tax free status should in all form be excluded from the taxable base for the purpose of DDT.

25. Accordingly, in our view we hold that amount of dividend paid to IFC should be reduced while calculating the DDT paid. Thus, the grounds raised by the assessee are allowed, that is, the amount of dividend paid to IFC is to be reduced from the total amount on which DDT is payable.

**26. In the result, all the appeals of the assessee are allowed.**

Order pronounced on 16<sup>th</sup> June, 2025.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 16/06/2025  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**