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.)

1. These are a batch of seven appeals filed under Section 260A of the Income Tax Act, 1961 (for short "**IT Act**"), challenging a common order dated 11 November 2024 passed by the Income Tax Appellate Tribunal, Bench at Pune,

whereby, the appeals filed by the appellant/assessee challenging the orders passed by the Commissioner of Income Tax (Appeal), Pune (CIT)(A) are dismissed. The assessment years in question are assessment year 2014-15 to 2020-21.

2. The assessee has raised the following questions of law:

I. Whether Dividend Distribution Tax ('DDT') prescribed under section 115-O of the Income-tax Act, 1961 ('Act') is in substance and effect a tax on dividend income of non-resident shareholders and where recipient shareholders are residents of United Kingdom the more beneficial rate of tax of 15% under Article 11 of DTAA between India – UK is applicable?

II. Whether decision of the Special bench of Tribunal in the case of *Deputy Commissioner of Income Tax Vs. Total Oil India Pvt. Ltd., ITA 6997/Mum/2019* lays down the correct law?

III. Without prejudice, whether the Tribunal erred in not appreciating that since in view of Article 24(1)(b) of the DTAA between India and UK, levy of DDT was specifically covered within Article 3(1)(c) of the DTAA between India and UK, therefore, the lower rate of tax i.e., 15% (inclusive of surcharge and cess) as provided for under Article 11(2) of the DTAA between India and UK should apply instead of 16.994% (inclusive of surcharge and cess) as provided under section 115-O of the Act?

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.

5. On 30 November 2014, the assessee filed its return of income tax for the assessment year in question (A.Y. 2014-15) disclosing a total income of Rs.27,17,03,590/- under the normal provision of the Income Tax Act. In such Assessment Year, the assesssee distributed dividend, amongst its shareholders and to its foreign shareholders, aggregating to Rs.7,66,30,021/- on which the assessee paid Dividend Distribution Tax ("DDT") amounting to Rs.1,30,23,272/- @16.994%.

6. It is assessee's case that in terms of Article 11 of the India-UK Double Taxation Avoidance Agreement (DTAA), dividend becomes taxable @15% in the hands of the beneficial owner of the dividend i.e. shareholders. According to the assessee, consequent thereto, dividend of Rs. 7,66,30,021/- being paid to Vesuvius Holdings Limited (VHL), Foseco Overseas Limited (FOL) and Foseco UK Limited (FUL) of UK, was taxable at the beneficial rate of 15% as prescribed

under DTAA, being an amount of Rs.1,14,94,503/-. It is the assessee's contention that instead, the assessee paid the DDT at an amount of Rs. 1,30,23,272/- (@16.994%) which is an amount of tax more than what would be required to be paid applying the provisions of the DTAA. Accordingly, the assessee contended that it had become entitled for refund of the DDT paid in excess of the rates prescribed under the applicable DTAA, which was in the tune of Rs.15,28,769/- i.e. (1,30,23,272/- less Rs.1,14,94,503/-). Similar are the contentions in the companion appeals, except the amount being different.

7. In these circumstances, on 12 May 2021, the assessee filed a refund application under Section 237 of the Income Tax Act, with the respondents claiming refund of the excess DDT paid over and above rates specified in India – UK: DTAA.

8. On 19 July 2021, the assessee received a letter under Section 154 from the respondents, wherein it was stated that an option to modify the DDT payment was not available in the system. On 17 August 2021, the assessee submitted its reply to the said letter wherein the assessee stated that technical difficulty ought not to stand in the way of the assessee being granted and/in denying such refund, being entitled to the assessee. Hence, the assessee requested the concerned officer to pass an order under Section 237 of the Income Tax Act.

9. On such backdrop, on 25 November 2022, an order was passed by the respondent observing that DDT is "an additional income tax" on companies, imposed under the domestic law and it was the company which was subjected to tax under Section 115-O of the IT Act, on a transaction arising within the

territorial jurisdiction of India, hence, the assessee would not be entitled to the benefit of the reduced rate of tax as per the India – UK DTAA. The relevant observations as made in the order read thus:

> "7. After analyzing the submissions of the assessee, the provisions of the DTAA, section 90 & Section 115-O of the Income Tax Act, it is construed that DDT is a tax imposed under the domestic law on a domestic company on a transaction arising within the territorial jurisdiction of India. It would be appropriate here to take a note from provision of section 115-O of the Act-
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> Sub-section (4) of the section 115-O speaks that, "(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 therefore shall be claimed by the company or by any other person in respect of the amount of tax so paid."
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> Sub-section (5) of the section 115-O laid down that, "(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."
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> 8. The issue of applicability of the tax treaty rate to DDT must be approached after addressing another critical issue- 'whether DDT is a tax on the Company or the shareholder, since the distributable surplus stands reduced to the extent of DDT'. In this regard, attention is drawn to the decision of the Bombay High Court in the case of Godrej & Boyce Mfg. Co Ltd. Vs. Dy. CIT [2010] 194 taxman 203/328 ITR 81 which was rendered in the context of section 14A vis-à-vis Section 115-O of the Act. The Hon'ble Court has observed that-
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> "The effect of section 115-O is that in addition to the income-tax chargeable on the total income of a domestic company, additional income-tax is charged on profits declared, distributed or paid. This tax which is referred to as a tax on distributed profits is what it means namely, a tax on the profits of the company. This is not a tax on dividend income. Under section 115-O, the charge is on a component of the profits of the company; that component representing profits declared, distributed or paid. The tax under section 115-O 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.
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> Provisions contained in Chapter XII-D are special provisions relating to tax on the distribute profits of domestic companies. Even section 115-O 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 section 115-O is a tax on profits and not a tax on dividend.
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> The general principle of law is that a company is chargeable to taxon its profits as a distinct taxable entity and has to pay tax In discharge of its own liability and not on behalf of or as an agent of its shareholder. This position of the general law is recognized and incorporated in section 115-O and is not overridden the statutory provision"
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> 9. Thus, the Hon'ble Court had unequivocally held that DDT'is tax on the company and not on a shareholder. A similar position has been upheld by the

ITAT Mumbai in the cases of Sunash Investment Co Vs. Asstt. CIT [2007] 14 SOT 80 (Mum.- Trib.), Mohananlal M. Shal Vs. Dy. CIT [2007] 105 ITD 669 (Mum) and Asstt. CIT v. Dakshesh S. Shah [2004] 90 IT 519 (Mum).

10. The issue which now arises and needs deliberation is- 'whether a lower tax rate as specified in the treaty can be invoked when the tax is considered to be paid by the company and not the shareholder'. Article 11 of DTAA relates to tax on dividend income and not relating to tax on distribution of profit by way of dividend by a company. Therefore, the DTAA would not apply to such transactions.

11. On analysis of section 115-O of the Act, it is evident that DDT is an additional income tax levied on the company distributing dividend and not on the shareholders who receive the dividend. Referring to the provisions of sub-section (4) and (5) of section 115-O, DD1 charged under section 115-O is a tax on distributed profit and is charged on the company distributing the dividend and has no element of being a withholding tax payable on behalf of any other entity, shareholders or otherwise. Thus, sub-section (4) clarifies that no further credit can be claimed by the company or by any other person in respect of the amount of tax so paid. Further, section 115-O begins with a "non obstante clause" and therefore, the applicability of other provisions is ruled out.

12. Once the company declaring dividend has paid DDT, subsequently the dividends received by the shareholders is statutorily exempt from tax in the hands of the shareholder under sub-section (34) of section 10 of the Act. Thus, since there is no tax in the hands of shareholders on such dividend, there is no question of DTAA provisions being applicable since the Income-tax Act provisions are more favorable.

13. Considering the express provision of Section 115-O, which states that DDT is an 'Additional Income-tax' on companies and can very well argue that it is the resident company which is subject to tax under section 115-O and not the shareholder and, hence, the tax treaty benefits should be denied.

14. Thus, the DDT is a tax in the hands of the company declaring dividend and hence, as per the above discussion, the provisions of DTAA are not applicable to DDT.

15. Moreover, considering the facts that the assessee company is part of Vesuvius group which is a multinational group and having all the possible resources to take a well thought decision on tax rates after considering the provisions of Section 115-O, Section 90 of the Income Tax Act and also the article 11 of India-UK DTAA which could have been considered before assessee paid the DDT and still assessee paid the DDT at 20.35% rate. It simply means that the present application asking to refund the excess amount of DDT paid is an afterthought.

16. In view of the above facts and discussion, the application of assessee asking for refund out of excess DDT paid is hereby rejected."

(emphasis supplied)

10. The assessee being aggrieved by the aforesaid orders passed by the

respondent, rejecting the assessee's application under Section 237 of the IT Act, filed an appeal before the Commissioner (Appeals), *inter alia* contending that the denial of refund by the respondent in the impugned order dated 25 November 2022 was erroneous and unsustainable, as not only it was the case of refund being denied on technical issues in the system, but also for the reason that DDT is paid under Section 115-O of the Income Tax Act, on dividends declared and paid to the foreign shareholders. Hence such dividend paid to Vesuvius Holdings Limited (VHL), Foseco Overseas Limited (FOL) and Foseco UK Limited (FUL) was a tax on shareholders, it is the shareholders who are being taxed, who are the residents of the UK who stand covered under DTAA. It is contended that the DDT cannot be at a rate higher that what is provided under Article 11 of the DTAA. 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 Section 237 of the Income Tax Act read with Article 265 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 :-

> "**Findings:**
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> 2.3 I have carefully considered the facts of the case and submission filed by the appellant. The issue is regarding claim of refund of excess dividend distribution tax paid by the appellant u/s 115-O on repatriation of dividend income to its holding company viz. non-resident, shareholder companies, Vesuvius Holding Limited (VHL) holding 8.52% shares, Foseco (UK) Limited (FUL) holding 8.46% shares and Foseco Oveiseas Limited (FOL) holding 58% shares. Briefly, the appellant company distributed dividend of Rs. 7,66,30,021 to VHL, FUL and FOL during FY 2013-14. The appellant company deducted DDT on this as per section 115-O of the Act amounting to Rs. 1,30,23,272 (@16.994%). The appellant has claimed that instead of Tax deducted @ 16.994% (grossed up), the

DDT should have been restricted @10% as per of Article 11 of the India-UK Double Taxation Avoidance Agreement ('the DTAA' or 'the tax treaty') read with section 90(2) of the Act. It is seen that section 90 is under Chapter IX of the Income Tax Act which is on double taxation relief. This primarily deals with non-resident assesses and section 90(2) states the principle for granting relief of tax for non-resident assesses for avoidance of double taxation. It is not furnished how the dividends have been taxed in both India and UK for the non-resident parent entity and further in Indo-UK DTAA, the contracting states have not extended the treaty protections to profits distributed by Indian company by deeming the DDT paid by the Indian company as tax paid by shareholder and restricting the DDT rate.

2.4 Further, it is also seen that the Hon'ble Special Bench of the Mumbai ITAT passed order in case of **Total Oil India Pvt Ltd & Oth Vs DCIT, Mumbai & Oth (ITA No 6997/Mum/2019 dtd. 20.04.2023)** wherein the similar issue was decided. The Hon'ble tribunal has held that DDT is an additional tax levied on the company and not the shareholder and accordingly, the benefit of the lower tax rate as per the relevant DTAA for taxation of dividend will not be available in case of non-resident shareholders, except where specifically agreed upon. The relevant para of the ITAT order is reproduce as under:

"QUOTE

81. If domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect. In the Treaty between India and Hungary, the Contracting States have extended the Treaty protection to the dividend distribution tax. It has been specifically provided in the protocol to the Indo Hungarian Tax Treaty that, when the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend. While making Reference, in the case of Total Oil (supra), the Id. Division Bench has made the following observations on this aspect:

"(f) Wherever the Contracting States to a tax treaty intended to extend the treaty protection to the dividend distribution tax, it has been so specifically provided in the tax treaty itself. For example, in India Hungary Double Taxation Avoidance Agreement [(2005) 274 ITR (Stet) 74; Indo Hungarian tax treaty, in short], it is specifically provided, In the protocol to the Indo Hungarian tax treaty it is specifically stated that "When the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend". That is a provision in the protocol, which is essentially an integral part of the treaty, and the protocol to a treaty is as binding as the provisions in the main treaty itself. In the absence of such a provision in other tax treaties, it cannot be inferred as such because a protocol does not explain, but rather lays down, a treaty provision. No matter how desirable be such provisions in the other tax treaties, these provisions cannot be inferred on the basis of a rather aggressively creative process of interpretation of tax treaties. The tax treaties are agreements between the treaty partner jurisdictions, an agreements are to be interpreted as they exist and not on the basis of what ideally these agreements should have been.

(g) A tax treaty protects taxation of income in the hands of residents of the treaty partner jurisdictions in the other treaty partner jurisdiction. Therefore, in order to seek treaty protection of an income in India under

the Indo French to treaty, the person seeking such treaty protection has to be a resident of France. The expression `resident' is defined, under article 4(1) of the Indo French tax treaty, as "any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature". Obviously, the company incorporated in India, i.e. 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 article 26(1), deductibility non-discrimination under article 26(4), and ownership no discrimination under article 24(5) as, for example, article 26(5) 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. When the taxes are paid by the resident of India, in respect of its own liability in India, such taxation in India, in our considered view, cannot be protected or influenced by a tax treaty provision unless a specific provision exists in the related tax treaty enabling extension the treaty protection.

(h) Taxation is a sovereign power of the State- collection and imposition taxes are sovereign functions. Double Taxation Avoidance Agreement is in the nature of self-imposed limitations of a State's inherent right to tax, and these DTAAs divide tax sources, taxable objects amongst themselves. Inherent in the self-imposed restrictions imposed by the DTAA is the fact that outside the limitations imposed by the DTAA, the State is free to levy taxes as per it own policy choices. **The dividend distribution tax, not being a tax paid by or on behalf of a resident of treaty partner jurisdiction, cannot thus be curtailed by tax treaty provision."**

82. We are of the view that the above exposition of law is correct and we agree with the same. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT u/s. 115-O of the Act.

CONCLUSION:

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.

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On the basis of the reasoning given above, it is concluded that where dividend is

> declared, distributed or paid by a domestic company to a non-resident shareholder, which attracts DDT referred to in Section 115-O of the Act, such DDT 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 as specified in the relevant DTAA with reference to such dividend income. Wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying DDT, only then, the domestic company can claim benefit of the DTAA, if any.
>
> 2.5 In view of the above, I reject the claim of the appellant for refund of excess DDT. **Accordingly, these grounds of appeal are dismissed.**
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> 3. With the result, appeal is dismissed."
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> (emphasis supplied)

11. Being aggrieved by the aforesaid appellate orders passed by the CIT(A), being a common order passed on the appeals for the Assessment Years 2014-15 to 2020-21 dismissing the assessee's appeals, the assessee approached the Income Tax Appellate Tribunal ("Tribunal"). The Tribunal however dismissed the appeals filed by the assessee. The Tribunal followed the decision of the Special Bench of the Tribunal in the case of **Deputy Commissioner of Income Tax Vs. Total Oil India Pvt. Ltd., ITA 6997/Mum/2019**. The Special bench of the Tribunal had considered the position in law as laid down on the decision of this Court in **Godrej & Boyce Manufacturing Limited Vs. DCIT.**[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 **Godrej & Boyce Manufacturing Limited Vs. DCIT**[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

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1 2010 SCC OnLine Bom 1174

2 2017 (7) SCC 421

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. Colorcon Asia Private Limited Vs. Joint Commissioner of Income Tax and Ors.**[3] His contention is that the questions of law in the said case were similar to the questions as raised in the present appeal, wherein, this Court, decided the issue in favour of the assessee, while rejecting the Revenue's case considering all the relevant decisions[*].

13. Learned counsel for the appellant/assessee has submitted that the Division Bench has held that the DDT is a tax on dividend income of the shareholders and that the DTAA would prevail over the Income Tax Act. It is submitted that the Division Bench also overruled the decision of the Special Bench of the Tribunal in **Total Oil India Pvt. Ltd.** (supra) on which reliance was placed by the Tribunal in the impugned judgment to reject the assessee's appeal. It is submitted that the Division Bench also held that beneficial rate of tax would apply irrespective of who pays the tax, as Article 11 of the DTAA concerns as to what income is taxed and not who pays. Thus on the aforesaid primary contentions, the learned counsel for the assessee submits that the said impugned order passed by the Tribunal confirming the view taken by the authority below needs to be set aside by following the decision of the Division Bench in **M/s. Colorcon Asia Pvt. Ltd.** (supra).

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3 2025 SCC OnLine Bom. 5983

* Union of India Vs. Tata Tea Company Limited
Union of India Vs. Azadi Bachao Andolan and
Engineering Analysis Centre of Excellence Pvt. Ltd Vs. Commissioner of Income Tax and Ors. (2021) 432 ITR 471 SC.

Submission on behalf of the Revenue/Respondents.

14. On the other hand Mr. N. Venkataraman, learned Additional Solicitor General has made the following submissions:

(i) The primary issue involved in the present appeals is 'whether the DDT under Section 115-O of the IT Act is a tax on the Indian company being on its profits or whether it is a tax on the dividend paid to the shareholder. He submits that if it is a tax on the profits of the company, the assessee is not entitled to any refund of the DDT paid.

(ii) It is submitted that Section 115-O which deals with DDT is an "additional income tax" on the profits of a domestic company, and more specifically on the part of the profit which is declared, distributed or paid by way of Dividend. It is hence, not a tax on the dividend distributed to the shareholders. It is submitted that Section 115-O(1) of the IT Act explicitly states "*notwithstanding anything contained in any other provision of this Act,"* creating an independent charge on the distributed amount in addition to regular income tax on the company's "total income". This overriding clause ensures it supersedes Section 4 of the IT Act, which broadly charges income without specifying DDT.

(iii) It is next submitted that the Division Bench of this Court in **Godrej and Boyce Mfg. Co. Ltd. v. Deputy Commissioner of Income Tax and Anr.**[4] (Paragraphs 42 to 55), has held that, the DDT under Section 115-O of the IT Act is an additional tax on the profits of the company, which is distributed as

4 (2010 SCC Online Bom 1174)

dividend, whereas tax in the hands of the shareholder is taxed on dividend income. This Court also held that the effect of Section 115-O of the IT Act is in addition to the income tax chargeable on the total income of a domestic company i.e., such additional income tax is charged on the profits declared distributed and/or paid. This tax which is referred to as tax on distributed profits means that it is a tax on the profits of company, and not a tax on the dividend income under Section 115-O of the IT Act. 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 the said decision of this Court in **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 Section 115-O 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. It is contended that this Court has also held that the tax under Section 115-O of the IT Act, is not on income by way of dividend in the shareholders hands. Hence, the additional income tax

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5 [2017 (7) SCC 421] (See Paras 9,30,31,34)

6 2021 SCC Online Bom 1174

payable on the profits of a domestic company under Section 115-O of the Act is not a tax on dividend.

(v) It is next submitted that the legal interpretation as made by the Courts in the aforesaid decisions and is reinforced by the legislative history of Section 115-O of the IT Act, as reflected in the various Memoranda of Understanding, explaining the relevant Finance Bills and the contemporaneous speeches of the then Finance Ministers, which clearly elucidate the intent and scope of the provision. It is submitted that the recent decision of the Division Bench of this Court at Goa, in **M/s .Colorcon Asia Pvt. Ltd. v. The Joint Commissioner of Income Tax and Ors.** (supra) has failed to consider the decisions in Godrej & Boyce Mfg Co. Ltd. (supra) in the perspective as considered by this Court in **Godrej & Boyce Mfg Co., Ltd.** (supra) as also **Small Industries Development Board of India vs Central Board of Direct Access** (supra) and in fact is contrary to the decision of the Supreme Court in **Godrej & Boyce Mfg Co. Ltd. v. Deputy Commissioner of Income Tax and Anr.** (supra). It is submitted that the reasoning as rendered by the Division Bench in **M/s. Colorcon Asia Pvt. Ltd.** (supra) is also contrary to the object of introduction of amendments to Section 115-O of the IT Act as demonstrated by such materials namely the Memoranda of Understanding and the Finance Bills, as the said decision has wrongfully held that under the said provision, the incidence of tax has been shifted to the company, purely for 'administrative convenience' and the tax is in fact, a tax on the shareholders and the dividend received by them.

15. There are several other submissions made on behalf of the Revenue, which in our opinion need not be delved at this stage considering the view we intend to take, as also to avoid burdening this order.

Reasons and Conclusion

16. We have given our careful consideration to the submissions as urged on behalf of the parties.

17. At the outset, we may observe that the primary contention as urged on behalf of the appellant is to the effect that the issue stands squarely covered by the decision of the Division Bench of this Court at Goa in **M/s. Colorcon Asia Pvt. Ltd.** (supra). On the other hand, Mr. Venkataraman, learned Additional Solicitor General has taken a position that **M/s. Colorcon Asia Pvt. Ltd.** (supra), for the reasons as contended, does not reflect the correct position in law.

18. Thus, confronted with such situation, we intend to address the issues in regard to the approach which would be required to be adopted in the present proceedings and more particularly, considering the submissions as made by the learned Additional Solicitor General that this is a fit case which needs to be referred for a decision of a Larger Bench, as according to him **M/s. Colorcon Asia Pvt. Ltd.** (supra) has not been correctly decided. The following discussion would aid our conclusion.

19. We note our *prima facie* views on the issues. At the outset, we may note the provisions of Section 115-O of the Income Tax Act which reads thus:-

> "Tax on distributed profits of domestic companies.

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 section 2, 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,-

[*(i)* the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsi-diary and,-

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

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

Explanation - For the purposes of this sub-section, a company shall be a sub-sidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company.]

[(IB) For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sul section (1) as reduced by the amount referred to in sub-section (1A) [hereafter referred to as net distributed profits), shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits:]

[**Provided** that this sub-section shall not apply in respect of dividend referred to in sub-clause (e) of clause (22) of section 2.]

(2) **Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.**

(3) **The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of-**

(a) declaration of any dividend; or

(b) distribution of any dividend; or

(c) payment of any dividend,

whichever is earliest.

(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.

[(6) Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing. operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend [***]]:

[Provided that the provisions of this sub-section shall cease to have effect from the 1st day of June, 2011.]

[(7) No tax on distributed profits shall be chargeable under this section in respect of any amount declared, distributed or paid by the specified domestic company by way of dividends (whether interim or otherwise) to a business trust out of its current income on or after the specified date:

Provided that nothing contained in this sub-section shall apply in respect of any amount declared, distributed or paid, at any time, by the specified domestic company by way of dividends (whether interim or otherwise) out of its accumulated profits and current profits up to the specified date.

Explanation. - For the purposes of this sub-section,-

(a) "specified domestic company" means a domestic company in which a business trust has become the holder of whole of the nominal value of equity share capital of the company (excluding the equity share capital required to be held mandatorily by any other person in accordance with any law for the time being in force or any directions of Government or any regulatory authority, or equity share capital held by any Government or Government body);

(b) "specified date" means the date of acquisition by the business trust of such holding as is referred to in clause (a).]

"[(8) Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on 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, 2017, out of its current income "[or income accumulated as a unit of International Financial Services Centre after the 1st day of April, 2017], either in the hands of the company or the person receiving such dividend.
>
> *Explanation*. -For the purposes of this sub-section,-
>
> (a) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 283 of the Special Economic Zones Act, 2005 (28 of 2005);
>
> (b) "unit" means a unit established in an International Financial Services Centre, on or after the 1st day of April, 2016;
>
> (c) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999) and the rules made thereunder.]"
>
> (emphasis supplied)

20. Section 115-O as noted by us falls in Chapter XII-D which provides for **"Special provisions relating to tax on distributed profits of domestic companies"**. It was inserted by the Finance Act, 1997 with effect from 01 June 1997. On a plain reading of Section 115-O, it is quite clear that the same begins with a non-obstante clause which confers an overriding effect of the said provision in regard to any other provisions of the Income Tax Act. Further it clearly provides that subject to the said provisions, "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 date provided for in the said section however, before 31 March 2020, whether out of current or accumulated profits shall be charged "to additional income tax" at the rate of 15%.

21. Thus on a plain reading of the provision, it is abundantly clear that the provision provides for a dividend distribution tax payable by a domestic company under a domestic law. In this context, sub-section (4) of Section 115 is significant

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 Income Tax 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. 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. It is also not a tax which is paid by the company on behalf of the shareholders, nor does the company acts as an agent of the shareholder in paying the tax as provided for in these special provisions as contained in Chapter XII-D, which provides for tax on distributed profits of domestic companies.

22. There appears to be nothing in the provision to indicate that the operation of Section 115-O in any manner is either related and/or is controlled by the DTAA. Also the provisions of Section 115-O, when it concerns the rate of tax, we do not find in such provision, that the legislature intended to include the operation of the DTAA, and more particularly as contained in Article 11 of the DTAA in question, which relates to tax on dividend income and not relating to tax on distribution of profits by way of dividend by a company. Thus, insofar as the charging of such tax under Section 115-O is concerned, the DTAA appears to have no application. It is also required to be borne in mind that once the

company declaring dividend has paid the DDT, the dividend received by the shareholder is statutorily exempt from tax in the hands of the shareholders under sub-section (34) of Section 10 of the Income Tax Act. Thus, when Section 115-O imposes such tax payable by the company as an additional tax, it is not a tax or the amounts being received by the shareholders on such dividend, hence, there is no question of the DTAA provisions being applicable in the operation of Section 115-O. Thus, any other reading of Section 115-O that what it strictly provides, would amount to reading something in the said provision which the legislature has expressly either not provided, or the same has been kept away. On such preliminary note, we discuss how the Courts have dealt with the said provision in the context of the contentions as urged on behalf of the parties and noted by us hereinabove.

23. In **Godrej and Boyce Mfg. Co. Ltd. vs. Deputy Commissioner of Income-tax & Anr.**[7], the Division Bench of this Court was confronted with an issue, revolving on the computation of the total income of the assessee-Godrej and Boyce Mfg. Co. Ltd. The issue before the Court was for Assessment year 2002-03, the assessee claimed a dividend of Rs. 34.34 crores being exempt from the total taxable income. In such context examining the effect of Section 115-O of the Act, the Division Bench held that :- The dividend income and income from mutual funds cannot be regarded as exempt income. That tax on dividends declared, distributed or paid by the Company is imposed under Section 115-O and similar is the position of mutual funds under Section 115-R. Hence, when Section 10(33) provides that such income shall not be included as income of the

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shareholder/Unit holder, it does not mean that this is exempt income or income which is not charged to tax; The Court observed that , applying Heydon's rule of interpreting statutes and considering the object of inserting Section 14A, the phrase "does not form part of the total income" should be read as equivalent to exempt income; It was held that Dividend from shares or income from units of mutual funds are not exempt income as they are charged to tax under Sections 115- O and 115R on the declaration of the dividend by a Company or, as the case may be, the distribution of income by a mutual fund. Tax is charged on such independent streams of income under Sections 115-O and 115R and is collected from the payers. This method of collection had been adopted by the Legislature in the interest of efficiency and to avoid paper work. The exemption from tax under Section 10(33) in the hands of shareholders/unit holders was enacted to obviate a double taxation of the same stream of income, once in the hands of the payer and thereafter in the hands of the recipient. Section 10(33) was enacted because tax on dividend has already been collected from the dividend paying Company. There is a specific charge independent of the Company's liability to pay tax under Section 4. The relevant observations as made by the Court are required to be noted, which reads thus:

> "35. The submission which has been urged on behalf of the assessee is that Section 14A has no application either to dividend income or to income from mutual funds. The submission proceeds on the basis that the words "in relation to income which does not form part of the total income under this Act" can have no application to dividend income from shares or to income from mutual funds for the reason that such income is not exempt from income tax, but is subject to tax under Section 115-O and Section 115R.
>
> 36. Now, Sub-section (1) of Section 115-O prior to its substitution by the Finance Act of 2003 with effect from 1 April 2003, provided as follows :
>
> > "(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 June, 1997 but on or before the 31st day of March, 2002, whether out of current or accumulated profits shall be charged to additional income tax (hereinafter referred to as tax on distributed profits) at the rate of ten per cent."

37. Sub-section (1) of Section 115-O begins with a non obstante provision and stipulates that any amount declared, distributed or paid by a company by way of dividends shall be charged to additional income tax: 'Additional' because this is in addition to income tax chargeable in respect of the total income of the domestic company. The total income of a domestic company is chargeable to income tax under the Act. In addition, any amount declared, distributed or paid by such company by way of dividends is subjected to additional income tax at the stipulated rate. The charge under sub section (1) of Section 115-O is on a component of the profits of the domestic company representing an amount declared, distributed or paid by way of dividend.

39. The plain meaning of Section 14A 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. Section 10 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 Finance Act of 2003 with effect from 1 April 2003, income by way of dividends referred to in Section 115-O 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 Section 10. (Clause 33 of Section 10 was omitted by the Finance Act of 2003. Clauses 34 and 35 which were inserted by the same Finance Act, now provide that income by way of dividends referred to in Section 115-O and income received in respect of the units of a mutual fund specified in clause 23(b) shall not be included in computing the total income of any person for the previous year). Plainly dividend income and income from mutual funds are incomes which by virtue of the provisions of Section 10, do not form part of the total income under the Act. Expenditure incurred in relation to the earning of such income has to be disallowed under Section 14A.

40. The submission which has been urged on behalf of the assessee is that the expression "income which does not form part of the total income" under the Act should be interpreted to mean income which is exempt from tax, On this hypothesis, it has been urged that Section 14A will not apply to dividend income because the Revenue has already received its share of tax.

41. The submission cannot be accepted. The expression "income which does not form part of the total income" under the Act must receive its plain and grammatical construction. Such income is income which is not includible in computing the total income of the assessee under the provisions of the Act for a previous year. Now it is trite law that under the Act, "it is income that is taxed but it is not taxed in vacuo. It is taxed in the hands of a per son. (CIT v. Indian Bank Ltd. (1965) 56 ITR 77; AIR 1965 SC 1473 at paragraph 19 page 1476). Section 2(45) defines the expression "total income" to mean the total amount of income referred to in Section 5, computed in the manner laid down in the Act. Section 4 charges the total income "of the previous year" of every person to income tax. Section 5

makes a reference to the scope of the total income of any previous year of a person who is the recipient. This is defined to include all income, from whatsoever sources derived, which is received or deemed to be received or which accrues or is deemed to have accrued in India or which accrues or arises outside India during the previous year. Section 10 defines those categories of income which shall not be included in computing the total income of the previous year of any person. Income tax is a tax on income in the hands of the assessee. Hence, when Section 14A disallows expenditure incurred by the assessee in relation to income which does not form part of the total income, it would include categories of income such as dividend from shares and income from mutual fund which under Section 10 are not to be included in the total income. Since dividend income and income from mutual funds are not included in the total income of the assessee, no deduction of expenditure is permissible under Section 14A(1). Sub-section (5) of Section 115-O stipulates that no deduction under any other provisions of the Act shall be allowed to the Company or to a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon.

42. The tax which is paid by the Company on profits declared, distributed or paid by way of dividend is not a tax which is paid on behalf of the shareholder. The company is liable to pay income tax in respect of its total income. In addition to the income tax chargeable in respect of its total income, a domestic Company is charged with the payment of additional income tax, called a tax on distributed profits on any amount declared, distributed or paid by the Company by way of dividend. The charge under sub-section (1) of Section 115-O is on the profits of the Company; more specifically on that part of the profits which is declared, distributed or paid by way of dividend. The charge under sub-section (1) of Section 115-O is not on income by way of dividend in the hands of the shareholder.
The additional income-tax payable on profits of a domestic company under Section 115-O is not a tax on dividend.

43. Section 115-O provides that a domestic company which declares, distributes or pays dividend out of current or accumulated profits, shall, apart from paying tax on its total income, pay additional income-tax on the amount of profits declared, distributed or paid as dividend or after 1 April 2003.

44. To illustrate, if Rs.1,000/- is the total income of a domestic company and out of the total income of Rs.1,000/-, Rs. 300/- is declared, distributed or paid as dividend, then that domestic company is liable to pay income tax on the total income of Rs.1,000/- at the rate specified under the relevant Finance Act and is further liable to pay additional income-tax at the rate prescribed under Section 115-O on the amount of profits declared, distributed or paid as dividend.

45. Section 115-O has been enacted with a view to exempt dividend income. Prior to the insertion of Section 115-O, domestic companies were liable to pay tax on the total income (including profits distributed as dividends) and shareholders were liable to pay tax on dividend income received. Domestic companies distributing profits as dividends were liable to deduct tax at source and shareholders receiving the dividend were entitled to take credit of such tax deducted at source. As this method was found to be cumbersome, Parliament chose to exempt dividend income in the hands of

the shareholder and chose to levy additional income-tax on the amount of profits declared, distributed or paid as dividend by the domestic companies. Thus, by inserting Section 115-O, additional income-tax is levied on the amount of profits declared, distributed or paid as dividend and by inserting Section 10(33) it is made clear that the dividends referred to in Section 115-O would be exempt from tax.

46. In Purushottamdas Thakurdas vs. C.I.T. (1963) 48 ITR (SC) 206 the Supreme Court construed the provisions of Section 16(2) and Section 49B of the Indian Income Tax Act, 1922. Sub-section (2) of Section 16 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 general law, the Company is chargeable to tax on its profits as a distinct taxable entity and it paid tax in discharge of its own liabilities and not on behalf of or as an agent for its shareholders"

……..

48. Significantly, in the Income Tax Act, 1961, Parliament has not made such a deeming provision as was enacted in Section 49B of the act of 1922. On the contrary, sub-section (4) of Section 115-O has the effect of providing that the shareholder cannot claim any credit for the amount paid by the Company under Section 115-O(1). There is, therefore, merit in the submission of the Additional Solicitor General that dividend received by the shareholder is not tax paid. Similarly, as noted earlier, under sub-section (5), a shareholder is not entitled to claim any deduction in respect of the amount which has been charged to tax under sub-section (1) of Section 115-O or the tax thereon. Hence, viewed from the perspective of Section 115-O as well as Section 14A, it is evident that the tax on distributed profits is a charge on the Company. The Company is chargeable to tax on its profits as a distinct taxable entity. It does not do so on behalf of the shareholder. The Company does not act as an agent of the shareholder in paying the tax under Section 115-O. In the hands of the recipient shareholder dividend does not form part of the total income. On the contrary, Section 10(33) clearly evinces parliamentary intent that incomes from dividend (and from mutual VBC 44 ITXA626.10 funds) are not includible in the total income.

51. We have also been fortified in the conclusion which we have drawn, by the judgment of the Supreme Court in Walfort (supra). The Supreme Court has in the following observation expressly held that since dividend income does not form part of the total income, the expenditure that is incurred in the earning of such income cannot be allowed even though it is of a nature specified in Sections 15 to 59.

55. In order to conclude the discussion on this aspect of the case, we would proceed to recapitulate our conclusions:

(i) …….

(x) The effect of Section 115-O is that in addition to the income tax chargeable on the total income of a domestic Company, additional income tax is charged on profits declared, distributed or paid. This

tax which is referred to as a tax on distributed profits is what it means, namely, a tax on the profits of the Company. This is not a tax on dividend income. Under Section 115-O, the charge is on a component of the profits of the Company; that component representing profits declared, distributed or paid. The tax under Section 115-O 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. This legal position is fortified by the circumstance that the shareholder is not entitled to any deduction in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon;

(xi) Additional income-tax liability on the profits declared, distributed or paid as dividend by a domestic company, cannot be considered as tax on dividend, because,

(a) Provisions contained in Chapter XII-D are special provisions relating to tax on the distributed profits of domestic companies. Even Section 115-O in Chapter XII-D clearly states that the additional income-tax liability thereunder is on the amount of profits declared, distributed or paid by a domestic company as dividend. Thus, the additional income tax under Section 115-O is a tax on profits and not a tax on dividend.

(b) Distribution of profits as dividend being appropriation of profits, the company distributing profits as dividend is liable to pay tax on the total income inclusive of the amount of profits distributed as dividend. By inserting Section 115-O, the legislature has imposed additional income-tax on the amount of profits distributed as dividend. Thus, tax as well as additional income-tax are taxes levied on the profits of a domestic company. From the fact that the additional income-tax is levied only on profits declared, distributed, or paid as dividend, it cannot be said that the additional income-tax is not a tax on the profits of the domestic company but a tax on dividend.

(c) Where profits of a Company are distributed as dividend, those profits are taxed in the hands of the Company and dividends are taxed in the hands of the shareholders because the character of the income in the hands of a Company and in the hands of a shareholder is totally different. Profits in the hands of a company would be business income, whereas, the said amounts when distributed as dividend, would constitute dividend income in the hands of the shareholders. 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 Section 115-O 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.

> (d) Income-tax is charged on the income earned by an assessee. When profits are distributed as dividend, there is no income earned by a domestic company and consequently, there is no question of taxing the amount distributed as dividend. However, the legislature has chosen to impose additional tax in addition to the regular tax, payable on the profits of a domestic Company. Thus, the regular tax as well as the additional tax are taxes on the profits of the domestic companies.
>
> (e) Incomes enumerated in Section 10 are not includible in the total income, because the legislature exempts such income from tax. Dividends referred to in Section 115-O are covered under Section 10(33) and hence exempt from tax. As noted earlier, the additional tax under Section 115-O is a tax on the profits distributed as dividend and not a tax on dividend. In the absence of Section 10(33), tax would have been payable on the dividends referred in Section 115-O. Therefore, it is clearly evident from Section 10(33) that dividends referred to in Section 115-O are exempt from tax.
>
> **(f) It is contended that dividends taxed in the hands of a domestic company under Section 115-O if held taxable again in the hands of a shareholder, would amount to double taxation. There is no merit in this contention because, additional tax is a tax on the profits of the Company which is distributed as dividend, whereas, tax in the hands of a shareholder is a tax on dividend income.**
>
> (g) This is also supported by Circular No.763 dated 18 February 1998 issued to explain the provisions of Section 115-O and Section 10(33) inserted by Finance Act 1997. The Circular, clearly and unequivocally states that Section 10(33) and Section 115-O are intended to exempt dividend income and levy a new tax on distributed profits on domestic companies. Thus, what is collected under Section 115-O is the additional tax on profits distributed as dividend and not a tax on dividends, because dividends received are exempt under Section 10(33).
>
> (emphasis supplied)

24. It was thus clearly held by the Division Bench that effect of Section 115-O is that in addition to the income-tax chargeable on the total income of domestic company, an additional income-tax is charged on profits declared, distributed or paid. It was held that such tax which is referred to as a tax on distributed profits would mean that it is a tax on the profits of the company. This is not a tax on dividend income. It was held that under Section 115-O, the charge is on a

component of the profits of the Company.

25. The decision of the Division Bench in **Godrej and Boyce Mfg. Co. Ltd.** was assailed before the Supreme Court in **Godrej & Boyce Mfg. Co. Ltd. vs. Deputy Commissioner of Income-tax and Anr.** *(supra).* The Supreme Court noted the issue which had arisen for determination when it observed in paragraph 2 of its judgment that the appeal relates to the admissibility or otherwise of deduction of expenditure incurred in earning dividend income which is not includible in the total income of the assessee by virtue of the provisions of Section 10(33) of the Income Tax Act, 1961as in force during the relevant Assessment Year 2002-2003. Paragraph 2 reads thus:

> 2. The issue in the present appeal relates to the admissibility or otherwise of deduction of expenditure incurred in earning dividend income which is not includible in the total income of the Assessee by virtue of the provisions of Section 10(33) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") as in force during the relevant Assessment Year i.e. 2002-2003."

26. In paragraph 8 of the decision, the Supreme Court noted that the High Court had *inter alia* held that Section 14A of the Act* was required to be construed on a plain grammatical construction thereof and the said provision is attracted in respect of dividend income referred to in Section 115-O as such income is not includible in the total income of the shareholder. In so observing, the Supreme Court noted that the High Court had also held that the tax paid under section 115-O of the Act was an additional tax on that component of the profits of the dividend distributing company which is distributed by way of dividends and that the same is not a tax on dividend income of the assessee. The

* Section 14A [Expenditure incurred in relation to income not includible in total income.

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 Section 14A 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 Section 115-O as such income is not includible in the total income of the shareholder. Sub-sections (2) and (3) of Section 14A of the Act and rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules") would, however, not apply to the AY 2002-03 as the said provisions do not have retrospective effect. Notwithstanding the above the High Court upheld the remand as made by the Tribunal to the AO though for a slightly different reason as will be noticed hereinafter. We may also notice that the High Court in its impugned judgment also held that the tax paid under section 115-O of the Act is an additional tax on that component of the profits of the dividend distributing company which is distributed by way of dividends and that the same is not a tax on dividend income of the assessee.
>
> 9. Aggrieved, the instant appeal has been filed raising two questions in the main which have been summarized by the appellant, and we may say accurately, as follows :
>
> > "(a)Irrespective of the factual position and findings in the case of the Appellant, whether the phrase "income which does not form part of total income under this Act" appearing in Section 14A includes within its scope dividend income on shares in respect of which tax is payable under Section 115-O of the Act and income on units of mutual funds on which tax is payable under Section 115-R.
> >
> > (b) Whatever be the view on the legal aspects, whether on the facts and in the circumstances of the Appellant's case and bearing in mind the unanimous findings of the lower authorities over a considerable period of time (which were accepted by the Revenue) there could at all be any question of the provisions of Section 14A in the appellant's case."

27. The Supreme Court dealing with the provisions of Section 115-O did not disturb as to what was held by the Division Bench of this Court in **Godrej & Boyce Mfg. Co. Ltd.** (supra) as clearly seen from the observations of the Supreme Court in paragraph 9, 30, 31 and 34, which read thus:

> "9. Aggrieved, the instant appeal has been filed raising two questions in the main which have been summarised by the appellant, and we may say accurately, as follows:
>
> "(*a*) Irrespective of the factual position and findings in the case of the appellant,

whether the phrase "income which does not form part of total income under this Act" appearing in Section 14-A includes within its scope dividend income on shares in respect of which tax is payable under Section 115-O of the Act and income on units of mutual funds on which tax is payable under Section 115-R.

(*b*) Whatever be the view on the legal aspects, whether on the facts and in the circumstances of the appellant's case and bearing in mind the unanimous findings of the lower authorities over a considerable period of time (which were accepted by the Revenue) there could at all be any question of the provisions of Section 14-A in the appellant's case."

…..
…..

30. While it is correct that Section 10(33) exempts only dividend income under Section 115-O of the Act and there are other species of dividend income on which tax is levied under the Act, we do not see how the said position in law would assist the assessee in understanding the provisions of Section 14A in the manner indicated. What is required to be construed is the provisions of Section 10(33) read in the light of Section 115-O of the Act. So far as the species of dividend income on which tax is payable under Section 115-O of the Act is concerned, the earning of the said dividend is tax free in the hands of the assessee and not includible in the total income of the said assessee. If that is so, we do not see how the operation of Section 14A of the Act to such dividend income can be foreclosed. The fact that Section 10(33) and Section 115-O of the Act were brought in together; deleted and reintroduced later in a composite manner, also, does not assist the assessee. Rather, the aforesaid facts would countenance a situation that so long as the dividend income is taxable in the hands of the dividend paying company, the same is not includible in the total income of the recipient assessee. At such point of time when the said position was reversed (by the Finance Act of 2002; reintroduced again by the Finance Act, 2003), it was the assessee who was liable to pay tax on such dividend income. In such a situation the assessee was entitled under Section 57 of the Act to claim the benefit of exemption of expenditure incurred to earn such income. Once Section 10(33) and 115-O was reintroduced the position was reversed. The above, actually fortifies the situation that Section 14A of the Act would operate to disallow deduction of all expenditure incurred in earning the dividend income under Section 115-O which is not includible in the total income of the assessee.

31. So far as the provisions of Section 115-O of the Act are concerned, even if it is assumed that the additional income tax under the aforesaid provision is on the dividend and not on the distributed profits of the dividend paying company, no material difference to the applicability of Section 14A would arise. Sub-sections (4) and (5) of Section 115-O of the Act makes it very clear that the further benefit of such payments cannot be claimed either by the dividend paying company or by the recipient assessee. The provisions of Sections 194, 195, 196C and 199 of the Act, quoted above, would further fortify the fact that the dividend income under Section 115-O of the Act is a special category of income which has been treated differently by the Act making the same non-includible in the total income of the recipient assessee as tax thereon had already been paid by the dividend distributing company. The other species of dividend income which attracts levy of income tax at the hands of the recipient assessee has been treated differently and made liable to tax under the aforesaid

> provisions of the Act. In fact, if the argument is that tax paid by the dividend paying company under Section 115-O is to be understood to be on behalf of the recipient assessee, the provisions of Section 57 should enable the assessee to claim deduction of expenditure incurred to earn the income on which such tax is paid. Such a position in law would be wholly incongruous in view of Section 10(33) of the Act.
>
> 34. For the aforesaid reasons, the first question formulated in the appeal has to be answered against the appellant assessee by holding that Section 14-A of the Act would apply to dividend income on which tax is payable under Section 115-O of the Act."

28. On such backdrop, we consider the contention as urged on behalf of the appellant/assessee that the issue, the assessee is canvassing that the DDT is a tax paid by the Company in the hands of the shareholders, and hence, the liability of the assessee under the DTAA would be to pay tax not at the rate as prescribed under Section 115-O but a lower rate of (10%) tax under Article 11 of the DTAA is no more *res integra* in view of the judgment of co-ordinate Bench of this Court in **Colorcon Asia Pvt. Ltd.** (supra). In **Colorcon Asia Pvt. Ltd.** (supra), the Division Bench was concerned with the assessee's case that during the AY 2016-17 to 2018-19 Colorcon had paid dividend to its parent company – Colorcon Limited, United Kingdom, as also had paid the Dividend Distribution Tax (DDT) thereon at the rate specified under Section 115-O of the Act. Also an interim dividend was paid for AY 2019-20.

29. Colorcon Asia Pvt. Ltd./ appellant having paid the cumulative dividend, pay out in excess of Rs.100 crores, filed an application under Section 245Q of the IT Act on 20 May, 2019 seeking an advance ruling on the questions before Board for Advance Rulings (BFAR), which were to the following effect:

(i) Whether Colorcon Asia Private Limited would be entitled to restrict the tax rate on dividends distributed or distributable by it to Colorcon

Limited, United Kingdom UK), at 10 per cent under Article 11 (Dividends) of the India-UK Tax Treaty ("Tax Treaty").

(ii) If the answer to question no.(1) is in the affirmative, whether in the facts and circumstances of the case and in law, the tax rate of 10 per cent under the Tax Treaty needs to be further grossed-up.

30. The BFAR after hearing the parties, rendered its ruling dated 27 June, 2024 (as impugned) when it answered the questions to the following effect:

(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 Article 2 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 Article 11 of the India-UK DTAA has no merit.

31. In considering the challenge to the aforesaid ruling of BFAR relying on the India-UK DTAA, Colorcon asserted that under the statutory scheme contained in the IT Act, which defines "Tax to be income tax chargeable " to include the dividend income, the term "dividend" was defined under Section 2(22) to include any distribution by a company of accumulated profits to its shareholders under

the provisions of Section 115-O (introduced by the Finance Act, 1997), the incidence of collection of tax on dividend from shareholders was shifted to dividend declaring company. It is in such context, the provisions of India-UK DTAA were considered and more particularly Articles 1, 2 and 11. Article 11 which deals with "Dividends", is to the following effect :-

> "ARTICLE 11
> DIVIDENDS
>
> 1. **Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.**
>
> 2. **However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed.**
>
> (a) 15 per cent of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;
>
> (b) 10 per cent of the gross amount of the dividends, in all other cases. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
>
> 3. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as any other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
>
> 4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 (Business profits) or Article 15 (Independent personal services), as may be the case, shall apply.
>
> 5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the

> company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.
>
> 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 Colorcon Asia Pvt. Ltd. (supra) was by juxtaposing the effect of Section 90 of the Income Tax Act read with the consequence of Article 11 qua the applicability of Section 115-O, 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 Section 2(22) of the Income Tax Act, and by taking into consideration the legislative history surrounding the insertion and repeal of Section 115-O, read alongwith the memorandum, offering the justification for such amendment. On such backdrop, the assessee contended that the DDT is nothing but tax on dividend, which is income of the shareholder, the incidence of which was shifted to the Company, and that there was no change in its substantive concept or definition, but all the while shifting has occurred for 'Administrative convenience'. Colorcon further asserted that in the light of the domestic law provision, DDT is levied on the dividend distributed by the Company, which is income of the "shareholders" being an 'Additional tax' covered by the definition of 'tax' as defined in Section 2(43) of the Act, falling within the ambit of charging Section 4 of the Act, being covered by provisions of the Income Tax Act, including Section 90 empowering the Central Government to enter into any 'Double Tax Avoidance Agreement' with another country. On such premise, Colorcon asserted that the impugned

ruling passed by BFAR against Colorcon was on an erroneous premise as Colorcon being a resident of India cannot seek relief under India -UK DTAA, which according to Colorcon, was contrary to the reading of Article 1 of the DTAA, which provided that the convention shall apply to persons who are resident of one or both of the contracting States, hence under Article 4, Colorcon was entitled to seek relief under the DTAA, whereby the payment was made to the resident of another contracting State. Thus, the ultimate contention referring to the relevant Articles of the India-UK DTAA, Colorcon, urged that if the payment made by the Colorcon Asia Pvt. Ltd. to Colorcon UK is in the nature of dividend as falling under the definition of 'dividend' provided under Section 2(22) of the IT Act and under Article 11(3) of the DTAA, and as a concept, since dividend has remained unchanged under the IT Act of 1961 or under the DTAA, but there is merely the change in the incidence of tax under the domestic law for administrative convenience, the benefit under the DTAA cannot be denied to Colorcon/appellant, hence, the situation would be governed under Article 11 of the DTAA.

33. The department resisted the aforesaid contention of Colorcon and supported the impugned ruling of the BFAR *inter alia* contending that Colorcon had paid dividend to Colorcon UK as also paid Dividend Distribution Tax (DDT) at the rate specified under Section 115-O of the IT Act for FYs in question. It was contended that in the context of DTAA in question, the dividend distribution tax was explicitly excluded from the scope of taxes covered under the

agreement. It was contended that since DDT is not classified under the heading "Tax", and hence the 10% withholding tax rates stipulated under Article 11(2) would not apply and the dividend would be governed by Indian Tax Laws. In supporting such contention, reliance was placed in the case of Total Oil India Private Ltd. (supra), in which after the analysis of the relevant statutory provisions, and treaties, the Special Bench of the Tribunal had reached to a conclusion that the tax paid under Section 115-O is an "additional tax" on the Domestic Company and it is not a tax in respect of non-residence income in India. It was categorically contended that on reading of Section 115-O of the Income Tax Act, it was evident that the incidence as well as charge in respect of DDT is only on the domestic company that declares, distributes or has paid the dividend. It was contended that the tax under section 115-O is an additional income tax, on the domestic company and by no stretch of imagination, DDT could be construed to mean as a tax on non resident dividend income, which is collected by domestic company. Revenue also placed reliance on the decision of this Court in **Godrej & Boyce Mfg. Co. Ltd.** (supra) as also the decision of the Supreme Court arising from such decision in **Godrej & Boyce Mfg. Co. Ltd.** (supra). The Division Bench analyzing the provisions of Section 115-O and its antecedents held that Dividend Distribution Tax (DDT) is not the tax on income of the dividend declaring company, however, ultimately it was a tax on the dividend income of the shareholders. The relevant observations in that regard are found in paragraph 26, which read thus:

> "26. The aforesaid amendment to Section 115-O make it clear that DDT is not the tax on income of the dividend declaring company, but it is

> ultimately a tax on the dividend income of shareholders. The provision of Section 115-O, though prescribe the tax on distributed profits of domestic companies to be in addition to the income tax chargeable in respect of the total income of a domestic company for any assessment year, declared or distributed by way of dividends, with effect from 01/04/2003, was charged to additional income tax. Sub-Section (2) made it evidently clear that though a domestic company had not paid any income tax on its income in accordance with the Act , the tax on distributive profits shall be payable by such company and it shall be paid to the credit of the Central Government within 14 days from the declaration of dividend or its distribution or payment whichever is the earliest.
>
> Sub-Section (1)(b) of Section 115-O, is the provision for grossing up of the dividend income of the shareholder for the purpose of computing DDT, but it always remain a tax on dividend, which can be declared out of companies reserves and it is not an additional income tax on profits of the company as even if the company is subject to loss during the financial year and do not pay income tax, but upon declaration of the dividend it is still required to pay DDT under sub-section (2), which make it clear that it is not a tax on profits of the company, but is tax on dividend.
>
> From the above alchemy of Section 115-O, shifting the incidence of DDT, in light of the definition of the term 'Dividend' under the Income Tax Act with the legislative history referred to above, the provision in form of Section 115-O, being amended on more than one occasion, we safely lead to an inference that DDT is a tax on dividend , which is income of the shareholder, but its incidence has been shifted to the company purely for administrative convenience though there is no change in the substantive Rule or concept of 'Dividend'. Since under the Income Tax Act, 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 Section 2 (43) of the Act and since it is covered by Charging Section 4, it must be necessarily subservient to the provisions of the Act which include Section 90."

34. The Division bench referring to **Godrej & Boyce Mfg. Co. Ltd.** (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 Article 11(2) India-UK DTAA. It was hence held that the decision in **Godrej & Boyce Mfg. Co. Ltd.** (supra) was of no succor to the Revenue. It was

also held that the decision in **DCIT Vs. Total Oil India Pvt. Ltd.** (supra), which followed the law laid down by the Supreme Court in **Godrej & Boyce Mfg. Co. Ltd.** (supra) while deciding the nature of DDT under Section 115-O of the IT Act, was held to be dealing with a different situation on different issue of disallowance of expenses under Section 14-A. It was observed that in contrast, the decision in **Union of India Vs. Tata Tea Company Ltd.**[8] in the context of tax on the dividend income was completely ignored by the authority. The Division Bench in conclusion held that from a combined reading of Section 115-O and 10(34), on the backdrop of the legislative history of the provisions, it was evident that DDT was a tax on the dividend income of the shareholder, though the incidence of tax has shifted from the shareholder to the company paying the dividend. It was held that any other interpretation of the provisions will render the section 115-O of the IT Act unconstitutional, as it will fall foul of Entry 82, since what is sought to be taxed by the department is not 'income' of the company. Also in conclusion, it was held that decision in **Godrej & Boyce Mfg. Co. Ltd.** *(supra)* was rendered on a different issue as to whether expenses incurred in relation to earning an exempt income by way of dividend was to be disallowed under Section 14-A of the IT Act.

35. On the aforesaid conspectus, the question which has arisen for consideration in the present proceedings is whether the DDT payable by the appellant under the provisions of Section 115-O would be required to be held, merely on the legislative history of the provisions of Section 115-O read with

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Section 10(34), to be a tax on the dividend income of the shareholder and not an additional tax by the company declaring the dividend. This more particularly on a plain purport of the said provision under Section 115-O begins with a non-obstante clause "Notwithstanding anything contained in any other provisions of this Act and subject to the provisions of this section", stipulates 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 dividend (whether interim or otherwise), whether out of current or accumulated profits shall be charged to additional income-tax (referred to as tax on distributed profits) in the manner a provided in the said provision and more particularly Section 115-O(3), providing for *"The principal officer of the domestic company and the company"* shall be liable to pay the tax on distributed profits, to the credit of the Central Government within fourteen days from the date of declaration of any dividend, distribution of any dividend, payment of any dividend, whichever is earliest. Further, in our opinion the Division Bench of this Court in **Godrej & Boyce Mfg. Co. Ltd.** (supra), has categorically held that payment of tax by domestic company under Section 115-O(1) was an additional income-tax on profits declared, distributed or paid being, is a charge on a component of the profits of the company. Thus, it is the company which is chargeable to tax, on its profits as a distinct taxable entity and it pays tax in discharge of its own liability and not on behalf of or as an agent for its shareholders. It was also categorically held that in the hands of the shareholder as the recipient of dividend, income by way of dividend does not form part of the

total income by virtue of the provisions of Section 10(33). This is the clear view of the Division Bench as seen from the conclusions/operative part of the decision of the Division Bench in **Godrej & Boyce Mfg. Co. Ltd.** (supra). Such view of the Division Bench was accepted and/or not disturbed by the Supreme Court, as the Supreme Court considering the provisions of Section 115-O and other relevant provisions, categorically held that sub-sections (4) and (5) of Section 115-O of the IT Act made it very clear that the benefit of such payments cannot be claimed either by the dividend paying company or by the recipient assessee except when 115-O was not to be applied. The Supreme Court also held that tax paid by the dividend paying company under Section 115-O is to be understood not to be on behalf of the recipient assessee, the provisions of Section 57 would enable the assessee to claim deduction of expenditure incurred to earn the income on which such tax is paid, and that such a position in law would be wholly incongruous in view of Section 10(33) of the Act.

36. It thus appears to us that the Division Bench in **Colorcon Asia Pvt. Ltd.** (supra) has made observations which in our respectful view appear to be contrary to the view taken by the Division Bench of this Court in **Godrej & Boyce Mfg. Co. Ltd.** (supra) as also confirmed by the Supreme Court. In fact the arguments of Mr. Venkataraman, learned Additional Solicitor General is that the decision in **Colorcon Asia Pvt. Ltd.** (supra) in such view of the matter is *per incuriam*, i.e., the same being contrary to the provisions of Section 115-O of the IT Act, which stands interpreted by the Supreme Court in **Godrej & Boyce Pvt. Ltd.** (supra).

37. Further, Mr. Venkataraman also drawing our attention to the decision of

the Division Bench of this Court in **Small Industries Development Bank of India vs. Central Board of Direct Taxes and Anr.**[9] has submitted that the view taken by the Division Bench in **M/s. Colorcon Asia Pvt. Ltd.** (supra) is also contrary to this decision of the Division Bench. Even in such case, the Division Bench of this Court has held that the tax under sub-section (1) of Section 115-O of the IT Act is on the company's profits and more specifically on that part of the profits which is declared, distributed or paid by way of dividend. It was held that such charge is not on income by way of dividend in the shareholder's hands and hence the additional income-tax payable on profits of a domestic company under Section 115-O of the Act is not a tax on dividend. It was also held that thus the amount distributed or paid by way of dividend falls in the category of income, profits or gains derived. The following observations as made by the Division Bench are required to be noted, which read thus:

> "14. Dividend is defined in Section 2(22) 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 Section 2(22) 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 Section 2(22)(a) of the IT Act. It needs to be noted that the charge under sub-section (1) of Section 115-O of the said Act is on the rsk 11 / 12 202-WP-1994-03-F-1.doc company's profits, more specifically on that part of the profits which is declared, distributed or paid by way of dividend. The charge under sub-section (1) of Section 115-O of the said Act is not on income by way of dividend in the shareholder's hands. Therefore, the additional income-tax payable on profits of a domestic company under Section 115-O of the said Act is not a tax on dividend. In our considered opinion, the amount distributed or paid by way of dividend falls in the category of income, profit or gains derived."

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38. Thus, another Division Bench has given similar meaning and interpretation to Section 115-O, which has been completely overlooked by the Division Bench in deciding **M/s. Colorcon Asia Pvt. Ltd.** (supra) is Mr. Venkataraman's submission. We find much substance in the contentions as urged by Mr. Venkataraman.

39. In the aforesaid circumstances, we are of the clear view that there is a cleavage of opinion considering the view taken by the Division Bench in the case of **M/s. Colorcon Asia Pvt. Ltd.** (supra) and the view taken by the Division Bench in **Godrej & Boyce Pvt. Ltd.** (supra) (as confirmed by the Supreme Court), as also similar view taken by another Division Bench in **Small Industries Development Bank of India** (supra).

40. In our respectful opinion, in these circumstances, the following questions of law are required to be answered by the Larger Bench:

(i) Whether the decision of the Division Bench in **M/s. Colorcon Asia Pvt. Ltd. vs. The Joint Commissioner of Income Tax, Panji Goa and Ors. (Tax Appeal No. 5/2024 decided on 28 November, 2025)** lays down the correct position in law when it holds that, Dividend Distribution Tax (DDT) is a tax paid by the Company, on dividend income of the shareholder, entitling the shareholder of the benefit of the provisions of Double Taxation Avoidance Agreement (DTAA) between India and UK?

(ii) Considering the decision of the Supreme Court in **Godrej**

& Boyce Pvt. Ltd. (supra), whether the decision of the Division Bench in **M/s. Colorcon Asia Pvt. Ltd.** (supra) is *per incuriam* ?

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.)