



**PADMA VIBHUSHAN N.A. PALKHIVALA MEMORIAL
NATIONAL MOOT COURT (VIRTUAL)
COMPETITION & RESEARCH PAPER COMPETITION 2023**

**MAHARASTRA NATIONAL LAW UNIVERSITY- MUMBAI
IN ASSOCIATION WITH
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE),
INCOME-TAX APPELLATE TRIBUNAL BAR ASSOCIATION- MUMBAI
&
GOODS SERVICES TAX PRACTITIONERS ASSOCIATION - MUMBAI**



MOOT PROPOSITION

Case Study

1. ABC Ltd. (ABC) is a limited liability company incorporated in India. It is a wholly owned subsidiary of PQR Ltd. (PQR), which is incorporated in Sweden. PQR is a tax resident of Sweden and is eligible to claim benefits of the double tax avoidance agreement (DTAA) between India and Sweden. During the previous year relevant to the assessment year (“AY”) 2019-20, ABC paid a dividend of Rs. 10 crore to PQR and paid dividend distribution tax (DDT) under section 115-O of the Income-tax Act, 1961 (the Act) at the applicable tax rate of 15% plus surcharge and cess thereon.
2. An assessment order under section 143(3) was passed in the case of ABC and certain additions and disallowances were made, which are not material for the present purposes. On appeal, the CIT(A) confirmed the said disallowances. ABC filed an appeal to the Tribunal. Before the Tribunal, an additional ground was taken by ABC to the effect that the rate of DDT should be restricted to the rates prescribed in DTAA and the excess tax should be refunded to ABC.
3. When the appeal came up for hearing, it was urged on behalf of ABC that DDT should be regarded as tax on dividend in the hands of the shareholders and accordingly the concessional rate mentioned in the DTAA should be applied. Reliance was also placed on the Protocol to India-Sweden DTAA as, according to ABC, by virtue of the said protocol, the beneficial provisions of other treaties, such as Hungary, Portugal and Slovenia, could be imported into the DTAA with Sweden and, hence, those provisions could be taken into account for deciding the rate of DDT.
4. The Tribunal, however, held that in view of the decision of the Special Bench in the case of DCIT vs. Total Oil India Pvt. Ltd. [2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB), the matter had to be decided against ABC. Accordingly, the Tribunal admitted the additional ground and decided the same against ABC. Tribunal decided other issues in favour of ABC, which are accepted by Revenue.
5. ABC has filed an appeal before the Hon’ble High Court of Judicature at Bombay against the order of the Tribunal. The Hon’ble Bombay High Court has been pleased to admit the following question of law and fix the same for final hearing:

6. What would be the applicable rate of dividend distribution tax on the dividends paid by ABC to PQR in view of the provisions of section 115-O of the Income-tax Act, 1961 read with the provisions of the double tax avoidance agreement between India and Sweden?”