IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'L' MUMBAI

BEFORE SHRI B.R. MITTAL (JUDICIAL MEMBER) AND
SHRI P.M. JAGTAP (ACCOUNTANT MEMBER)

ITA No. 1678/Mum/2010
Assessment Year-2002-03

The ACIT 9(3), Aayakar Bhavan, Mumbai-400 020	Vs.	M/s. Sidham Finance & Investment Pvt. Ltd., C/o Shroff & Co., 503-Deluxe Court, 5th Floor, Rao Budhkar Marg, Station Road, Bandra (W), Mumbai-400 050 PAN-AABCS 4351E
(Appellant)		(Respondent)

Appellant by: Shri Jitendra Yadav
Respondent by: Shri Dilip J. Thakkar & Shri Rajesh P. Shah

Date of Hearing :14.12.2011
Date of pronouncement: 16.12.2011

O R D E R

PER B.R. MITTAL, JM :

The Department has filed this appeal for assessment year 2002-02 against order of Ld. CIT(A) dt.23.12.2009 on following ground:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee had no liability to pay additional Income-tax u/s. 115-O on the proposed dividend of Rs. 2,70,90,091/- stating that the provisions of Sec. 115-O(1) of the I.T. Act, 1961 was amended w.e.f. 1.4.2002, and hence tax is payable by the shareholders."

2. We have heard Ld. Representatives of parties and have perused orders of authorities below.

3. The Assessing Officer observed that assessee in the profit and Loss account for relevant accounting year 2001-02 showed appropriation of profit to the extent of Rs. 2,70,90,090/- towards proposed dividend. He observed that assessee did not pay any additional tax u/s. 115-O(1) on the ground that provisions of Sec. 115-O(1) were amended with effect from 1.4.2002 and after that date, tax on dividend is payable by shareholders. However, AO stated that even though dividend was declared on approval of Annual General Meeting of shareholders, after close of previous year, it related back to the previous year 2001-02 and consequently provisions of Sec. 115-O(1) as it existed in financial year 2001-02 was applicable. Accordingly, he charged additional tax u/s. 115-O(1) of Rs. 28,18,453/- and also charged interest u/s. 115P of Rs. 24,09,778/-.

4. However, in the first appeal, Ld. CIT(A) has held that no liability to pay additional income tax u/s. 115-O on the impugned amount of proposed dividend could be levied because assessee declared dividend only after the close of accounting year relevant to assessment year under consideration and the proposed dividend appropriated in Profit & Loss Account of current year i.e. financial year 2001-02 does not amount to either declaration or distribution or payment of dividend as referred to in Sec. 115-O(1) of the Act. The CIT(A) also considered decision of Hon'ble Apex Court in the case of Mesoram Industries & Cotton Mills Ltd. Vs CWT 59 ITR 767 (SC) wherein it was held that till the company in its General Body meeting accepts, recommendation and declares the dividend the report of directors recommending for payment of dividend is only recommendation and it is not possible to hold that there was any debt owed by assessee to shareholders on the valuation date. It was observed by Hon'ble Apex Court that Directors cannot distribute dividend but they can only recommend to the general body

of the company the quantum of dividend to be distributed. Hence department has disputed the impugned order of Ld. CIT(A).

5. During the course of hearing, Ld. Departmental Representative supported order of AO. On the other hand, Ld. AR justified order of Ld. CIT(A). He also relied on decision of Hon'ble Jurisdictional High Court in the case of CIT Vs Indian Smelting & Refining Co. Ltd. 107 ITR 793 and submitted that liability to pay dividend will arise only from and after date of the resolution of shareholders at the Annual General Meeting declaring the dividend and it will be payable only from such date as may be specified in the resolution.

6. We observe that the only question which has arisen in this appeal is as to whether by making appropriation for proposed dividend in the Profit & Loss account by assessee company relevant to assessment year under consideration, assessee had incurred liability to pay the distributed profits tax u/s. 115-O of the I.T. Act or not. We observe that provisions of Sec. 115-O of the Act as applicable to assessment year 2002-03, company was liable to pay additional income tax on the amount declared, distributed or paid by way of dividend. In the assessment year under consideration, assessee-company only made appropriation for payment of dividend but dividend was paid after close of financial year relevant to assessment year under consideration as AGM of assessee company took place later on. We agree with Ld. CIT(A) that liability to pay dividend is crystallized only when payment of dividend is approved in AGM of assessee company. The Directors only recommend for payment of dividend and till it is approved in the General Body Meeting of shareholders, liability to pay dividend is not crystallized. Accordingly, we agree with Ld. CIT(A) that merely by appropriation of proposed dividend in the Profit and loss account does not amount to either declaration or payment or distribution of dividend as referred to Sec. 115-O(1) of the Act. The Hon'ble Jurisdictional High Court has held in the case of Indian Smelting & Refining Co. Ltd. (supra) that liability to pay dividend arises only from and

after the date of the resolution of the shareholders at the Annual general meeting declaring the dividend and it will be payable only from such date as may be specified in the resolution. Hence, we agree with Ld. CIT(A) that assessee company is not liable to pay any additional tax u/s. 115-O(1) of the Act on the impugned amount of proposed dividend. Therefore, there is also no consequential liability to pay interest u/s. 115-P of the Act. Hence, we uphold the order of Ld. CIT(A) and reject ground of appeal taken by department.

7. In the result, appeal filed by department is dismissed.

Order pronounced on this 16th day of December, 2011

Sd/-	***Sd/-***
(P.M. JAGTAP)	(B.R. MITTAL)
Accountant Member	Judicial Member

Mumbai, Dated 16th December,2011
Rj

Copy to :
1. *The Appellant*
2. *The Respondent*
3. *The CIT-concerned*
4. *The CIT(A)-concerned*
5. *The DR 'L' Bench*

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By Order

Asstt. Registrar, I.T.A.T, Mumbai

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1.	Draft dictated on:	14.12.2011		Sr. PS/PS
2.	Draft placed before author:	14.12.2011		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
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