2023:DHC:4906-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 09.01.2023
% *Judgment Pronounced on: 18.07.2023*

\+ **ITA 571/2019**
\+ **ITA 573/2019**
\+ **ITA 574/2019**
\+ **ITA 575/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX- 7,..... Appellant
Through: Mr Kunal Sharma, Sr Standing Counsel with Ms Zehra Khan, Adv.

versus

M/S. POLYPLEX CORPORATION LTD. ..... Respondent
Through: Mr Ved Jain with Mr Nischay Kantoor, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.:

Prefatory Facts

1. The above-captioned appeals, which are four (4) in number, are directed against a common order dated 24.01.2019 [hereafter referred to as "impugned order"] passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

1.1 The impugned order concerns Assessment Years (AY) 2010-11 (ITA 573/2019), 2011-12 (ITA 574/2019), 2012-13 (ITA 571/2019) and 2013-14 (ITA 575/2019).

2. The disputants before us, *via* their respective counsel, have conveyed that the controversy at hand is common to all four AYs and therefore, a decision rendered *vis-a-vis* one AY, will cover and/or apply to the remaining AYs as well. Notably, this position was also adopted before the Tribunal.

3. Accordingly, as was the case before the Tribunal, we will be adverting to the facts, as obtained in AY 2010-11.

4. Before we proceed further, we may indicate that the broad issue which arose for consideration before the statutory authorities [including the Tribunal] and us, concerns the following:

4.1 The respondent/assessee claims that it is eligible for tax credit *qua* tax which, though payable in the country from where the income emanated, was not paid because of the statutory regime operating in that country.

4.2 The respondent/assessee, in seeking tax credit *qua* tax payable [though not paid], has sought to place reliance on Article 23 of the Double Taxation Avoidance Agreement [in short, "DTAA"] obtaining between India and Thailand.

4.3 It is the respondent/assessee's stand that it ought to be given tax credit *qua* the tax which it was spared from paying, on income by way of dividend, received from its subsidiary in Thailand, in consonance with the provisions

of Article 23 of the Indo-Thai DTAA. Thus, the issue at hand centres around the concept of "tax sparing", which is embedded in several DTAAs arrived at between India and other countries, including Thailand.

5. On the other hand, appellant/revenue seeks to contend that because the tax was not paid by the respondent/assessee on dividend received from its Thai subsidiary, i.e., Polyplex (Thailand) Public Limited Company, it could not be granted tax credit on dividend income, which was otherwise taxable in India at the rate of 30% (plus surcharge and cess, at the applicable rates).

6. Thus, before we proceed further to adjudicate the issue at hand, the following broad facts concerning AY 2010-11 are required to be noticed.

7. The respondent/assessee had e-filed its return of income for AY 2010-11 on 13.10.2010. The income declared for the said AY was Rs.11,41,46,171/-. The return of income (ROI) was processed under Section 143 (1) of the Income Tax Act, 1961 [hereafter referred to as, "Indian Income Tax Act"].

7.1 The ROI was picked up for scrutiny, whereupon it was discovered that the respondent/assessee had claimed tax credit amounting to Rs.1,60,74,706/- in respect of tax, which it would have to ordinarily pay in Thailand on dividend received from its Thai subsidiary, but for the statutory regime obtaining in Thailand, which exempted levy of tax in that country.

7.2 It is important to note at this stage that the respondent/assessee had included in its ROI, dividend income amounting to Rs.68,81,05,808/- earned from its Thai subsidiary.

8. But for the exemption granted under the statutory regime obtaining in Thailand, the respondent/assessee would have to pay tax, in Thailand, at the rate of 10% on dividend received by it from its Thai subsidiary. On account of this, the respondent/assessee claimed tax credit for the amount quantified at the said rate, i.e., 10%, under the provisions of paragraphs 2 & 3 of the Article 23 of the Indo-Thai DTAA.

9. The Assessing Officer (AO), however, disagreed with the stand taken by the respondent/assessee and thus, declined the tax credit sought in the ROI.

10. The respondent/assessee, being aggrieved, carried the matter before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]. The CIT(A), *via* a common order dated 24.06.2016, rejected the appeals preferred against the assessment orders concerning the aforementioned AYs.

11. In the Tribunal, however, the respondent/assessee was successful. It was able to persuade the Tribunal that, having regard to the tax sparing concept which is embedded in several DTAAs, including the subject Indo-Thai DTAA, it was entitled to tax credit at the rate of 10%, on the dividend income received from the Thai subsidiary.

12. It is in this backdrop that the aforementioned appeals came to be lodged before this court.

Submissions of Counsel

13. In support the appellant/revenue's case, submissions were advanced by Mr Kunal Sharma, learned senior standing counsel, while on behalf of the respondent/assessee, submissions were made by Mr Ved Jain, Advocate.

14. Mr Sharma's arguments can, broadly, be paraphrased as follows:

(i) The AO had rightly declined tax credit. The respondent/assessee's stand that in view of Article 23 of the Indo-Thai DTAA, it could get tax benefit concerning tax which it had not, infact, paid, was flawed.

(ii) The CIT(A) correctly noted that paragraph 6 of the promotion certificate issued to the Thai subsidiary, based on which a claim was made that dividend distributed did not suffer tax in Thailand, did not, as a matter of fact, refer to dividend.

(iii) The Tribunal took a view that to obtain benefit under Article 23(2) of the Indo-Thai DTAA, it was not necessary that the respondent/assessee ought to have paid tax: what was relevant was whether it was liable to pay tax, and if so, that tax was not paid in view of exemption granted in that behalf. This was an erroneous conclusion, as it went beyond the scope and ambit of the Article 23 of the Indo-Thai DTAA. The respondent/assessee was not granted exemption, as envisaged in Article 23(2) of the Indo-Thai DTAA.

(iv) Furthermore, the respondent/assessee failed to furnish proof of such exemption being accorded to it. Thus, the Tribunal erroneously concluded that tax had not been paid in view of the exemption extended under the statutory regime prevailing in Thailand.

(v) The respondent/assessee did not pay tax, for reasons other than those provided in Article 23(2) of the Indo-Thai DTAA.

(vi) The exemption relied upon by the respondent/assessee was, in fact, extended to its Thai subsidiary. The exemption permitted the Thai subsidiary to not pay tax on the dividend distributed by it. In the hands of the respondent/assessee, however, the dividend distributed and/or remitted to the respondent/assessee, became its income, and hence, the respondent/assessee cannot be allowed to rely upon the exemption under Thai law, to claim tax credit in India, under the Indian Income Tax Act.

(vii) The Tribunal, erroneously, interpreted provisions of Thai statues, which, being in the domain of foreign law, presented pure questions of fact. Given this position, the Tribunal ought to have remanded the matter to the AO.

(viii) In the given facts, the respondent/assessee could have claimed benefit of under Article 23(2) of the Indo-Thai DTAA, only if it had paid tax in Thailand. Since the respondent/assessee had not paid tax in Thailand, it was rightly declined tax credit by the AO.

15. Mr Ved Jain, on the other hand, on behalf of the respondent/assessee, emphasized the following aspects, in defence of the impugned order rendered by the Tribunal:

(i) The concept of tax sparing credit runs through several DTAAs executed by India, including with Oman, Jordan and France, apart from Thailand.

(ii) Under tax sparing provisions, tax credit may be claimed even for tax which, though payable, is exempted on account of incentives granted by the source country. Article 23 of the Indo-Thai DTAA would show that these benefits are available to the recipient of income, as in this case, in India, as well as those who reside in Thailand. [See Article 23(2) and Article 23(3) alongside Article 23(4) and Article 23(5) of the Indo-Thai DTAA].

(iii) The Thai subsidiary of the respondent/assessee was granted exemption from corporate income tax *vis-a-vis* its net profit under Section 31 of Investment Promotion Act B.E. 2520 (1997) [in short, "Investment Promotion Act"]. Besides this, the dividend distributed by the respondent/assessee's Thai subsidiary is also exempted from tax under the provision of 34 of the Investment Promotion Act.

(iv) Section 70 of the Revenue Code B.E. 2481 (1938) of Thailand [in short, "Thai Revenue Code"] levies tax at the rate of 10% on companies incorporated under foreign law, *qua* assessable income which emanates from, or is received in Thailand.

(v) Tax could only be levied, as per the Indo-Thai DTAA, on the dividend distributed by the Thai company, in Thailand. [See Article 10[1] of the Indo-Thai DTAA.]

[1] Article 10, Indo-Thai DTAA

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 company which is a resident of the other Contracting State, the tax shall not exceed—

(*a*)	15 per cent of the gross amount of dividends, in a case where the company paying the dividends is engaged in an industrial undertaking and the beneficial owner of the dividends is a company of the other Contracting State owning at least 10 per cent of the voting shares of the company paying the dividends ;
(*b*)	in the case not covered by sub-paragraph (*a*) above, 20 per cent of the gross amount of dividends if the company paying the dividends is engaged in an industrial undertaking or if the beneficial owner of the dividends is a company of the other Contracting State owning at least 25 per cent of the voting shares of the company paying the dividends.

3. (*a*) 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 income from other corporate rights assimilated to income from shares according to the taxation laws of the Contracting State of which the company making the distribution is a resident.

(*b*) In this article, the term "industrial undertaking" means an undertaking falling under any of the classes mentioned below :

(*i*)	manufacturing, assembling and processing ;
(*ii*)	construction, civil engineering and ship-building ;
(*iii*)	production of electricity, hydraulic power or gas or the supply of water :
(*iv*)	agriculture, forestry and fishery and the carrying on of a plantation ;
(*v*)	any other undertaking entitled to the privileges accorded under the laws of either Contracting State on the promotion of industrial investment ; and
(*vi*)	any other undertaking which may be declared to be an "industrial undertaking" for the purposes of this article by the competent authority of the Contracting State in which the undertaking is situated.

4. The provisions of paragraphs (*1*) and (*2*) 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

(vi) Since the dividend income received by the respondent/assessee has been offered to tax in India, at a higher rate i.e., 30% (exclusive of surcharge and cess), the respondent/assessee is entitled to tax credit at the rate of 10%, in accordance with Article 23 of the Indo-Thai DTAA. [See judgment dated 21.04.2017, passed in ITA 578/2016, titled ***PCIT v. Krishak Bharti Cooperative Limited,*** which was cited with approval in the judgment dated 17.12.2021, passed in ITA 177/2021, ***PCIT-3 v. Krishak Bharti Cooperative Limited.***

Reasoning and Analysis

16. Having heard arguments in the matter, and after etching out the broad issue which arises for consideration, it is quite evident that the controversy veers around the interpretation of Article 23 of the Indo-Thai DTAA. Thus, for the sake of convenience, the said Article is extracted hereafter:

"ARTICLE 23

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which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

[1] *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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting State shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. The amount of Thai tax payable, under the laws of Thailand and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Thailand, which has been subjected to tax both in India and in Thailand, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Thailand. Further, where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India and as to the balance, if any, against surtax payable by it in India.

3. For the purposes of the credit referred to in paragraph (2), the term "Thai tax payable" shall be deemed to include any amount which would have been payable as Thai tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under the provisions of the Investment Promotion Act (B.E. 2520) or of the Revenue Code (B.E. 2481) which are designed to promote economic development in Thailand, or which may be introduced hereafter in modification of, or in addition to, the existing laws for promoting economic development in Thailand.

4. The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Thailand, in respect of profits or income arising in India, which has been subjected to tax both in India and Thailand, shall be allowed as a credit against Thai tax payable in respect of such profits or income provided that such credit shall not exceed the Thai tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in India.

5. For the purposes of the credit referred to in paragraph 4, the term "Indian tax payable" shall be deemed to include any amount which would have been payable as Indian tax for any assessment year but for an exemption or reduction of tax granted for that year or any part thereof by the special

incentive measures under the provisions of the Income-tax Act, 1961 (43 of 1961), which are designed to promote economic development, or which may be introduced hereafter in modification of, or in addition to the existing provisions for promoting economic development in India.

6. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted."

17. Paragraph 1 of Article 23 provides that taxation of income in the respective Contracting States shall continue to be governed by the laws in force in either of the Contracting States, except where, the provisions made in these laws are contrary to the Indo-Thai DTAA. In other words, in case of conflict, the provisions of the Indo-Thai DTAA would prevail. This is also the mandate of Section 90(2) of the Indian Income Tax Act. The said provision, explicitly, states that the provisions of the said Act shall apply only to the extent that they are more beneficial to the assessee, when examining issues concerning grant of relief of tax, in avoidance of double tax, in relation to an assessee to whom any DTAA applies.

17.1 Paragraph 2 of Article 23 allows tax credit against tax payable in India under the Indian Income Tax Act, *qua* "Thai tax payable" under the laws of Thailand, and in accordance with the provisions of Indo-Thai DTAA, whether directly or by deduction, by a resident of India concerning profits or income arising in Thailand, which is subjected to tax both in India and in Thailand. Paragraph 2 specifies the caveat that tax credit cannot

exceed the amount of tax payable under the Indian Income Tax Act (as computed before allowing any such credit), which is appropriate to the profits of income, arising in Thailand.

17.2 Where the resident is a company which is liable to pay sur-tax in India, the aforementioned tax credit is to be allowed in the first instance against income tax payable by the company in India, and the balance, if any, can only thereafter be adjusted against sur-tax payable by it in India.

17.3 Paragraph 3 of Article 23 of the Indo-Thai DTAA defines the term "Thai Tax Payable". The said paragraph provides that it shall deem to include any amount which will have to be payable as Thai tax for any year, but for exemption or reduction of tax, for that year or any part thereof, under the provisions of the Investment Promotion Act, or of the Thai Revenue Code, which are designed to promote economic development in Thailand, or which may be introduced hereafter, for modification or in addition to the existing law, for promoting economic development in Thailand.

17.4 Paragraph 3 of Article 23, thus, by employing a device of deeming fiction, includes in the expression "Thai Tax Payable" as adverted to paragraph 2 of the very same Article, that tax which would have been otherwise payable, but for an exemption or reduction of tax granted for that year or any part thereof, under the two statutory enactments referred to therein. Para 3 also alludes to the fact that the said statutes are designed to promote economic development in Thailand. Clearly, the provision is configured to incentivize investments in Thailand, by granting tax credit for

that amount which, otherwise, would have been payable as tax to the Thai state, but was not paid due to exemption or reduction granted under the said enactments.

17.5 Paragraph 4 and Para 5 of Article of 23 are a mirror image of Paragraphs 2 and 3 of the very same Article. Para 4 enables a resident of Thailand to claim tax credit with respect to "Indian Tax Payable", while paragraph 5, like paragraph 3, introduces a deeming fiction with regard to the "Indian Tax Payable". The only difference being that insofar as exemption or reduction of tax granted in the year in issue or any part thereof with regard to "Tax Payable in India", instead to adverting to any statute, the Indo-Thai DTAA refers to special incentive measures provided in the Indian Income Tax Act.

17.6 Paragraph 6 of Article 23 provides a clue as to the rate at which tax credit can be accorded by, *inter alia*, providing that it would be that rate of tax which would have been applicable, if income exempted from tax in accordance with the provisions of Indo-Thai DTAA, had not been so exempted.

18. Ordinarily the term “tax payable” would mean tax, which is owed or due, although not paid. However, the meaning of the expression has to be found in the treaty executed between two Contracting States. The treaties/ DTAAs often (as in the instant appeals) define the term “tax payable”. The intent of the Contracting States has to be, thus, ascertained from the term, as

contained in the DTAA, and not what would ordinarily be the meaning of a given expression or term.

19. Therefore, the meaning of the expression "Thai tax payable" or "Indian tax payable" has to be found in the definition embedded in the DTAA/treaty.

20. As is seen from a plain reading of Article 23 of the Indo-Thailand DTAA, credit for notional tax is granted to give a fillip and/or incentivize economic development/activity. This is a decision which is taken by Contracting States and therefore, unless there is ambiguity, the interpretation which is to be given to the expression "Thai tax payable" or "Indian tax payable" is to be based on a plain reading of what is provided in paragraphs 3 and 5 of Article 23. The said paragraphs exemplify mutuality of interests in giving stimulus to investment for securing economic development in both countries.

21. As to whether this is a best way forward is not for this court to question. There are critics of such provisions, but this is a decision which lies with the Contracting States. Critics say such tax sparing provisions could lead to double non-taxation. That tax sparing as a concept exists is discernible from the following extract set forth in Klaus Vogel on Double Taxation Conventions[2] commentary:

[2] Reimer & Rust (eds), Klaus Vogel on Double Taxation Conventions, 5th edn (2021)

> *"Whenever the credit method is applicable to items of income from foreign sources,* ***tax benefits*** *offered by the source State for reasons of economic or social policies, especially in the form of incentives to encourage economic development, are siphoned off by the State of residence State. Rather than benefitting the tax payer, the incentive benefits the residence State's revenue authorities (always provided that, as usual, the amount of tax collected by the source State is lower, at least on account of the reduction, than the residence State's tax). The tax incentive is thus cancelled out. That effect can be avoided by the residence State calculating the credit as if the tax in the source State remained at the unreduced level ('credit for notional tax', 'tax sparing' or 'tax matching credit') (no. 72 OECD MC Comm. on Article 23).*
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> *A credit for* ***notional taxes*** *is typically granted in tax treaties concluded between developed and developing countries. Many developing countries insist on the inclusion of a tax sparing provision during tax treaty negotiations in order be able to attract foreign direct investment and promote economic growth by granting tax incentives. Some countries are willing to grant a tax sparing provision to allow their resident enterprises to compete in the source State under nearly the same conditions as other investors. Tax sparing conditions come close to facilitating capital import neutrality. …."*

22. Having examined the scope of Article 23, it is clear that the facts obtaining in the above-captioned appeals would have us agree with the Tribunal, that the respondent/assessee was entitled to claim tax credit on dividend income received from its Thai subsidiary, in respect of "Thai Tax Payable", which it would have to pay, but for the exemption accorded to it under the provisions of Section 34 of the Investment Promotion Act. In other words, if the exemption available under Section 34 of the Investment Promotion Act had not kicked in, the dividend income would have suffered tax at the rate of 10% under Section 70 of the Thai Revenue Code. For the sake of easy reference, the relevant provisions of the Investment Promotion Act and the Thai Revenue Code, are extracted hereafter:

Investment Protection Act

"Section 34. Dividends derived from a promoted activity granted an exemption of juristic person income tax shall be exempted from computation of taxable income throughout the period the promoted person receives the exemption of juristic person income tax."

Thai Revenue Code

"Section 70. A company or juristic partnership incorporated under foreign laws and not carrying on business in Thailand but receiving assessable income under Section 40 (2)(3)(4)(5) or (6) which is paid from or in Thailand, shall be liable to pay tax. The payer of income shall deduct corporate income tax from such assessable income at the corporate income tax rate and remit it to the local Amphur office together with the filing of a tax return in the form prescribed by the Director General within 7 days from the last day of the month in which such income is paid. Section 54 shall also apply mutatis mutandis."

23. As noticed by us hereinabove, the same benefit concerning tax credit is available to a Thai resident, under Article 23(4) and (5) of the Indo-Thai DTAA.

24. The fact that the Revenue Code and the Investment Promotion Act are specifically mentioned in Article 23(3) of the Indo-Thai DTAA, persuades us to hold that even though foreign law raises an issue of fact, which requires proof of the given fact, no proof is required in the instant case, as the foreign law in question is referred to, specifically, in the DTAA which is being executed by Contracting States, i.e., India and Thailand. Thus, the argument advanced on behalf of the appellant/revenue that Tribunal ought to have sent back the question of the exigibility of dividend income to tax and its exemption, being subject matter of foreign law, to the AO, does not impress us.

25. The other argument advanced on behalf of the appellant/revenue, that paragraph 5[3] of the Promotion Certificate issued by the Board of Investment does not advert to dividend income, does not impress us either. A bare perusal of the document shows that the said certificate has been issued under the provisions of Investment Promotion Act, which as noticed hereinabove, is referred to Article 23 (3) of the Indo-Thai DTAA. Paragraph 5 of the Promotion Certificate, in no uncertain terms, *inter alia*, states that the under Section 31[4], paragraph 1 of the Investment Promotion Act, the promoted person shall be granted exemption from corporate income tax levied on net profits earned from promoted activity. Notably, Paragraph 6[5] states that under Section 34, dividend distributed from the promoted activity to which exemption from corporate tax is granted under Section 31, shall also be exempt from inclusion of tax calculations throughout the period in which the promoted person remains exempt from corporate income tax payments. Dividends are distributable profits, and if, as per paragraph 5, net profit is exempt from corporate income tax, dividends could not possibly amenable

[3] 5. Under Section 31, paragraph one, the promotion person shall be granted exemption from corporate income tax, levied on net profits earned from the promoted activity in the aggregate amount of no more than one hundred percent of its investment, exclusive of land value and working capital, for eight years from the first day the activity starts generating such earnings…

[4] Section 31. A promoted person shall be granted exemption of juristic person income tax on the net profit derived from the promoted activity as prescribed by an announcement of the Board, of which the proportion to the investment capital excluding cost of land and working capital shall be taken into consideration by the Board, for a period of not more than eight years from the date income is first derived from such activity.

[5] 6. Under Section 34, dividends distributed from the promoted activity, to which exemption from corporate income tax is granted under section 31, shall also be exempt from inclusion in tax calculations throughout the period the promoted person remains exempt from corporate income tax payments.

to tax. As noticed above, paragraph 6 of the said Certificate, specifically alludes to exemption of dividends distributed, from levy of corporate income tax. The appellant/revenue's argument therefore is, in our view, untenable.

26. This apart, the appellant/revenue had not advanced this submission before any of the statutory authorities.

27. To sum up the entire edifice, the appellant/revenue's appeals are based on the proposition that tax credit as claimed, could not be extended to the respondent/assessee, because it had not paid tax in Thailand, i.e., that benefit under Article 23 of the Indo-Thai DTAA could only be extended in a situation where the tax had actually been paid. In view of the rationale provided by us hereinabove, this argument is completely misconceived. The concept of tax sparing is embedded in several DTAAs which have been executed by India, such as with France, Jordan and Oman, apart from Thailand.

28. Insofar as the Indo-Thailand DTAA is concerned, credit for tax sparing works for residents of Thailand, as well as India. This is a mechanism which is engrafted in DTAAs to incentivize investment for economic development.

29. Interdiction of such provisions would, in our view, be detrimental to the larger public interest.

30. Thus, for the foregoing reasons, we are disinclined to interfere with the impugned order passed by the Tribunal.

31. According to us, no substantial question of law arises for our consideration.

32. The ITA No.573/2019 concerning AY 2010-11 is dismissed. As indicated right at the outset, since the issue raised in the said appeal is common to the remaining appeals, the said appeals would suffer the same fate. Accordingly, ITA Nos.571/2019, 574/2019 and 575/2019 are also dismissed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

JULY 18, 2023