Dividend received by FII on Indian Depository Receipts in its UK bank can't be taxed in India: ITAT

Facts of the case - Barclays Capital Mauritius Ltd. v. ACIT - [2023] (Mumbai - Trib.)

Assessee-FII based in Mauritius was carrying on investment activities in the Indian capital market. The assessee claimed that the dividends received on equity shares from SC Plc UK, which was first distributed to an overseas custodian bank and then transferred to a domestic depository in foreign currency before being transferred to the assessee's bank account in Indian INR.

Dividends on IDRs declared by SC Plc, should be considered as income from a foreign company (SC Plc) and paid abroad. Hence, it was income that was accruing or arising outside India.

However, the Assessing Officer (AO) held that the dividend received by the assessee was taxable under the provisions of the Act as well as under article -10 of the India-Mauritius treaty. Aggrieved-assessee filed the instant appeal before the Tribunal.

Decision of the case :

- The Tribunal followed the view taken in the case Morgan Stanley Mauritius Co. Ltd. [2021] (Mum. - Trib.). Tribunal held that insofar as the fact that dividend income is received by assessee in India is not in dispute, the findings of authorities below cannot be faulted in holding that the money received by the assessee from the Indian depository in respect of dividend paid by bank Plc UK is taxable in India.
- Further, as per Article 10 of the Indo-Mauritius tax treaty, it is clear that dividend being paid "by a company which is resident of a Contracting State" to the resident of the other Contracting State is a sine qua non for application of Article 10.
- In the given case, the dividends can be treated as having been paid either by the SCB-UK itself or by the SCB-India. Whichever way one looks at it, none of these payments can be treated by an Indian resident, i.e. one of the Contracting States.
- None of these entities, i.e., the foreign company or the Indian depository, can be treated as 'residents of a Contracting State' for the purpose of the Indo-Mauritius tax treaty. Accordingly, the dividend income in question cannot be brought to tax in India under article 10 of the treaty.
- Additionally, as per the Indo-Mauritius tax treaty, which is more favourable to the assessee and overrides domestic laws, the dividends on IDRs are not taxable. Without any opposing evidence, the only conclusion is to follow the said ruling.