Kolkata ITAT holds that interest on income tax refund was not taxable by virtue of MFN clause under India-Netherlands Tax Treaty

- Recently, the Hon'ble Kolkata Tribunal in case of **Koninklijke Philips NV**[1] held that interest on income tax refund to the Netherlands-based assessee was not taxable in India by application of beneficial provisions of India-Italy Tax Treaty pursuant to Most Favoured Nation (MFN) clause in the Protocol of India-Netherlands Tax Treaty.

Brief facts of the case:

- Assessee company, resident of the Netherlands, is into the business of consumer electronics appliances and medical systems.
- While granting tax refund pursuant to the order giving effect to the appellate order for various years, the tax officer withheld taxes on interest on income-tax refunds.
- On appeal, the first appellate forum accepted the application of MFN clause of India-Netherlands Tax Treaty to import the provisions under India-Italy Tax Treaty, however, did not allow the relief holding that it would lead to application of deeming provisions of India-Italy Tax Treaty. Aggrieved, Assessee filed appeal before Tribunal.

Key observations of the Tribunal:

- India-Italy Tax Treaty came into force (on 23-11-1995) post date of signing of India-Netherlands Tax Treaty (on 21-1-1989), hence the beneficial provisions of the India-Italy Tax Treaty on the aspect of taxability of interest shall be available by virtue of MFN clause in the India-Netherlands Tax Treaty.
- Question of deeming provisions under the tax treaty or under Indian domestic laws does not arise when provisions of tax treaty are based on the negotiated terms between the countries to arrive at more restrictive scope of taxation on certain incomes including interest.
- Reliance was placed on decision of Hon'ble Madras High Court in case of *Ansaldo Energia SPA*[2] wherein it was held that interest on income tax refund is a 'debt claim' payable by revenue and in terms of Article 12(3)(a) of the India-Italy Tax Treaty, interest on income tax refund was not taxable in India.

[1] ITA No. 437 to 441 / Kol / 2021
[2] 384 ITR 312