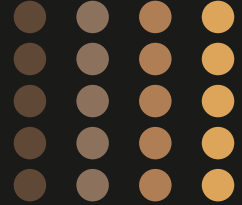


Journal of National Law University Delhi

Volume 12
2026



Articles

Constitutionalism Beyond Rights: Why Structure Matters

*Hon'ble Justice
B.V. Nagarathna*

Existing Between Gaps: The Crisis of Refugee Protection in
India in the Backdrop of Immigration and Foreigners Act, 2025

*Bharti Yadav and
Nyamat Sekhon*

Deconstructing the Probation Paradigm: A Critical Analysis
of the Probation of Offenders Act, 1958 & the Bharatiya Nagarik
Suraksha Sanhita, 2023

Oshin Sharma

Case Comments

Dividend Distribution Tax: More than Meets the Eye –
A Critical Analysis of *Polycab India Ltd. v. Assistant Commissioner
of Income-tax*

*Ashrita
Prasad Kotha*

Case Comment on *Vanashakti v. Union of India: Ex Post Facto
Environmental Clearances as De Facto Practice?*

Nikita Samarnath

॥ न्यायस्तत्र प्रमाणं स्यात् ॥



NATIONAL LAW UNIVERSITY DELHI

EDITORIAL BOARD

Chancellor

Justice Devendra Kumar Upadhyaya

Chief Justice, High Court of Delhi and Chancellor, National Law University Delhi

Editor in Chief

Prof. (Dr.) G.S. Bajpai

Vice Chancellor, National Law University Delhi

Editor

Prof. (Dr.) Risham Garg

Professor of Law & Registrar, National Law University Delhi

Advisory Board

Prof. (Dr.) A. Jayagovind

Former Vice Chancellor, NLSIU

Prof. (Dr.) Philippe Cullet

SOAS, UK

Prof. (Dr.) Anupam Jha

University of Delhi

Prof. (Dr.) Umakanth Varottil

NUS, Singapore

Prof. (Dr.) Dipa Dube

IIT Kharagpur

Managing Editor

Prof. (Dr.) Amita Punj

Professor, National Law University Delhi

Senior Editor

Dr. Mukul Raizada

Professor, National Law University Delhi

Associate Editor

Dr. Monika Negi

Assistant Professor, National Law University Delhi

Assistant Editor

Dr. Dakshina Chandra

Assistant Professor, National Law University Delhi

Administrative Editors

Dr. Priya Rai

University Librarian, National Law University Delhi

Dr. Samar Iqbal Bakhshi

Deputy Librarian, National Law University Delhi

Student Editors

Vidushi

B.A.L.L.B. (Hons.), National Law University Delhi

Ashwin Arun

B.A.L.L.B. (Hons.), National Law University Delhi

Chaitanya Chaturvedi

B.A.L.L.B. (Hons.), National Law University Delhi

MODE OF CITATION

12 J.NLUD <pg. no.> (2026)

NATIONAL LAW UNIVERSITY DELHI



Published by

National Law University Delhi Press
Sector-14, Dwarka, New Delhi-110078
www.nludelhi.ac.in

Journal of National Law University Delhi is published annually.

Print Subscription Price Rs. 400/- (Postage extra if applicable)

ISSN: 2277-4017

Copyright © 2026 National Law University Delhi, India

All rights reserved.

Disclaimer:

Views expressed in the Journal of National Law University Delhi are those of the contributors. The Editors and NLUD Press do not necessarily subscribe to the views expressed by the contributors. The Editors and NLUD Press disclaim all liability and responsibility for any error or omission in this publication. In the case of binding defect, misprint, missing pages etc. the publisher's liability is limited to replacement of the defective copy.

All enquiries regarding the Journal should be addressed to:

Managing Editor
Journal of National Law University Delhi
National Law University Delhi
Sector-14, Dwarka, New Delhi-110078
www.nludelhi.ac.in
Email: jnlud@nludelhi.ac.in
Tel. No: +91 11 28034255
Fax No: +91 11 28034254

ISSN 2277-4017



2 2 7 7 - 4 0 1 7

CONTENTS

Articles

- Constitutionalism Beyond Rights: Why Structure Matters 1
Hon'ble Justice B.V. Nagarathna
- Existing Between Gaps: The Crisis of Refugee Protection in India in the Backdrop of Immigration and Foreigners Act, 2025 18
Bharti Yadav and Nyamat Sekhon
- Deconstructing the Probation Paradigm: A Critical Analysis of the Probation of Offenders Act, 1958 & the Bharatiya Nagarik Suraksha Sanhita, 2023 55
Oshin Sharma

Case Comments

- Dividend Distribution Tax: More than Meets the Eye – A Critical Analysis of *Polycab India Ltd. v. Assistant Commissioner of Income-tax* 78
Ashrita Prasad Kotha
- Case Comment on *Vanashakti v. Union of India: Ex Post Facto* Environmental Clearances as *De Facto* Practice? 93
Nikita Samarnath

**DIVIDEND DISTRIBUTION TAX: MORE THAN MEETS THE EYE -
A CRITICAL ANALYSIS OF POLYCAB INDIA LTD.
v. ASSISTANT COMMISSIONER OF INCOME-TAX**

*Ashrita Prasad Kotha**

Abstract

The case emanates from the dividend distribution tax (DDT) paid by Polycab on shares held by International Finance Corporation (IFC), one of its shareholders. IFC was set up by an international agreement to support the private sector in developing countries and was granted tax immunity on its income and transactions under the founding multilateral treaty and supporting domestic law. Polycab sought refund of DDT owing to IFC's immunity. The Income Tax Appellate Tribunal (ITAT) ruled in favour of Polycab by considering dividend distribution within the immunity clause and reading in an exemption into the income tax legislation. Significantly, the DDT is designed as a tax on Polycab but when the agreement and domestic law came into being, dividends would have been taxed in IFC's hands. Courts must now decipher the true scope of the fiscal immunity clause while considering how to balance international commitments with domestic tax law changes.

Keywords: *Dividend Distribution Tax, Fiscal Immunity, Interpretation, Multilateral Agreements*

* Associate Professor of Law, National Law School of India University. The author would like to thank the anonymous peer reviewers, Professor (Dr.) Nigam Nuggehalli, Department of Revenue Chair Professor, National Law School of India University and Meyyappan Nagappan (Partner – Tax, Trilegal India) for comments. The author would also like to acknowledge the research assistance of Rupam Dubey, Vth year student, BALLB (Hons.), National Law School of India University.

I. INTRODUCTION

This comment pertains to the order of the Mumbai bench of the Income Tax Appellate Tribunal (ITAT) in *Polycab India Ltd. v. Assistant Commissioner of Income-tax*,¹ (Polycab). The core issue pertains to taxation of dividends.

It is apposite to begin with a brief background to the Indian income tax system. Income tax legislations, world over, are either schedular or global in nature. A schedular system requires income to be pegged into one of the recognized schedules as tax liability is based on the rules applicable to the relevant schedule. This is unlike the global system which does not require identification of a relevant schedule as tax liability is computed as total income reduced by total expenses.²

The Income-tax Act, 1961 (IT Act) is schedular and the liability is on total income spanning five schedules.³ Each schedule has its own rules governing the tax base and sometimes, tax rates as in the case of capital gains.⁴

Conceptually, dividend is derived from root words that signify the sum that is to be divided or the process of division.⁵ Black's Law Dictionary defines it as “a portion of a company's earnings or profits distributed pro rata to its shareholders, usually in the form of cash or additional shares.”⁶ The IT Act defines dividends along the same lines through a broad definition.⁷

World over, there are various approaches to taxing dividends. Countries choosing to tax dividends must decide who to tax (company or shareholder).⁸ Under the IT Act, dividend is placed under the residuary schedule - income from

¹ *Polycab India Ltd. v Assistant Commissioner of Income-tax*, [2025] 175 taxmann.com 707 (Mumbai - Trib).

² Lee Burns and Richard Krever, 'Individual Income Tax' in Victor Thuronyi (ed), *Tax Law Design and Drafting*, vol 2 (International Monetary Fund 1998), <https://www.elibrary.imf.org/display/book/9781557756336/CH014.xml> accessed 29 December, 2025.

³ The five heads of income are salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.

⁴ Nigam Nuggehalli, 'The Commissioner of Income Tax v M/s Nalwa Investments Ltd and Others' (2021) 33 National Law School of India Review 182.

⁵ Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson Reuters 2024) 545.

⁶ *ibid*.

⁷ Income-tax Act 1961, s 2(22)(a).

⁸ See Ernst & Young, *Worldwide Corporate Tax Guide 2025* (10 Oct 2025).

other sources.⁹ The Indian approach to dividend taxation has undergone several changes.¹⁰ Since April 2020, India adopts the classical approach which taxes the shareholder for dividend received as per applicable slab.¹¹ The classical approach aligns with the core idea of taxing the income earner (the shareholder) on the pro rata distribution received.

For several years though, including the years in question involving the instant dispute, India taxed the domestic company at a flat rate when distributing dividends. This tax, referred to as the Dividend Distribution Tax (DDT), was imposed through Section 115-O in a separate chapter.¹² By placing DDT outside the five schedules, the Indian government consciously deviated from the prevalent norm of taxing dividends in the income earner's (shareholder's) hands. As a corollary, resident shareholders were granted a corresponding exemption on dividend received.¹³

Section 115-O begins with *non-obstante* language and describes the DDT as an “*additional income-tax*”. The government has argued that the DDT is a tax on the distributing company, not borne by the shareholder. Taxpayers have argued that the DDT is akin to a tax on the shareholder's income. The issue has been controversial with a range of inconsistent rulings. All of these involved the interplay of DDT with bilateral tax treaties with the core issue being whether foreign shareholders could claim relief under the tax treaties.¹⁴

⁹ Income-tax Act 1961, s 56(2)(i).

¹⁰ India adopted the DDT regime from June 1997 to March 2002 and April 2003 to March 2020 and the classical system from April 1961 to May 1997, April 2002 to March 2003 and since April 2020.

¹¹ Ministry of Finance, Government of India, Explanatory Memorandum to the Finance Bill, 2020 (2020) 27–28 <https://www.indiabudget.gov.in/budget2020-21/doc/memo.pdf> accessed December 29, 2025.

¹² Income-tax Act 1961, Chapter XII-D.

¹³ Income-tax Act 1961, s 10(34).

¹⁴ *Giesecke & Devrient (India) (P.) Ltd. v Additional Commissioner of Income Tax* [2020] 120 taxmann.com 338 (Delhi - Trib.); *Deputy Commissioner of Income-tax v Total Oil India (P.) Ltd* [2021] 127 taxmann.com 774 (Mumbai - Trib.); *Deputy Commissioner of Income-tax v Indian Oil Petronas (P.) Ltd* [2021] 127 taxmann.com 389 (Kolkata - Trib.); *Colorcon Asia (P) Ltd v Joint Commissioner of Income-tax* [2025] 181 taxmann.com 301 (Bom - HC). In *Foseco India Ltd. Company v Assistant Commissioner of Income Tax* [2026] 185 taxmann.com 1015 (Bom - HC) the Bombay High Court has referred the pending question (including whether Colorcon lays down the correct position of law) to a larger bench.

Although the DDT is no longer in force, this issue is not yet settled and comes up also in this dispute. In essence, Polycab's strategy was to seek relief like the taxpayers in the previous inconsistent rulings involving bilateral tax treaties, albeit under the multilateral treaty that set up the International Finance Corporation (IFC), Polycab's shareholder. This dispute thus brings up a relatively unexplored interaction of the DDT issue with multilateral treaties.

II. OVERVIEW OF THE ITAT ORDER

The key facts are as follows. The assessee is a public listed company that manufactures and sells cables, wires and electrical goods. Polycab distributed dividends and paid DDT for assessment years 2018-2019, 2019-2020 and 2020-2021. Polycab seeks refund in respect of the DDT paid on dividend distributed to IFC, one of its shareholders.¹⁵

IFC is a global development institution part of the World Bank group set up pursuant to a multilateral treaty,¹⁶ signed by various countries including India. IFC was set up to promote “*economic development by encouraging the growth of productive private enterprise in member countries*”.¹⁷ IFC was granted certain fiscal immunities which was to be effectuated in domestic law.¹⁸ India introduced the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (IFC Act) for the said purpose. The immunity is granted to IFC, “*its assets, property, income and its operations and transactions*” from “*all taxation and from all customs duties*” and applies “*notwithstanding anything to the contrary contained in any other law*”.¹⁹

Polycab argued that it did not have an obligation to deduct DDT on dividends paid to IFC owing to the latter's immunity from taxation. The ITAT favoured Polycab employing two lines of reasoning.

¹⁵ IFC held 15%, 9.50% and 9.48% equity shares in the assessee company in assessment years 2018-19, 2019-20 and 2020-21, respectively.

¹⁶ International Finance Corporation, Articles of Agreement (2023) <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-articles-of-agreement-en.pdf> accessed date 29 December 2025.

¹⁷ *ibid*, Article 1.

¹⁸ *ibid* Article VI, Section 9-10. This is also in line with Article 253 of the Constitution of India.

¹⁹ International Finance Corporation (Status, Immunities and Privileges) Act, 1958, Schedule I, Section 9 read with Section 3.

First, the IFC Act overrides all domestic legislation including the IT Act even if it was introduced subsequently as the tax exemption would be rendered nugatory otherwise. When statutory immunity flows from an international agreement, there is no need for an explicit provision in the domestic law. Having decided that the IFC Act has an overriding nature, the ITAT holds that IFC's immunity encompasses not only its income but all “*manifestation of financial activity*”.²⁰

The second reason follows Polycab's counsel's in *arguendo* argument that relied on the IT Act instead as a fallback statutory argument even if the first broader argument relying on treaty sanctity was challenged on appeal. The order endorsed the view that the DDT is a tax on the company's profits in view of the ITAT special bench ruling (Total Oil).²¹ However, ITAT concluded that Polycab need not have deducted DDT by reading in an exemption in favour of IFC by interpreting Section 115-O(1A)(ii). According to Section 115-O(1A)(ii) dividend paid to any person for or on behalf of the New Pension System Trust (NPS Trust) ought to be excluded from the DDT base. The ITAT infers that the carve out exists because any person receiving dividends under the NPS Trust is tax exempt. When viewed that way, the NPS Trust and IFC must be treated alike as both are tax-exempt entities. Despite the absence of an express provision spelling out IFC, ITAT invoked legislative intent, purposive and equitable interpretation based on its reading of the holistic statutory scheme.²²

III. CRITICAL ANALYSIS: AN OPTIMAL OUTCOME, A MISSED OPPORTUNITY AND A MISSTEP

Looking further into the first reason, there were two parts to it. First, that the IFC Act overrides IT Act and second, that the tax immunity extends to IFC's transactions. The analysis here responds to each of the limbs of the reasoning.

²⁰ *Polycab* (n 1) [15], [24].

²¹ *Deputy Commissioner of Income Tax v Total Oil India (P) Ltd*, [2021] 127 Taxmann.com 774 (Mumbai - Trib).

²² *Polycab* (n 1) [24].

A. Interpretation of the Fiscal Immunity Clause within the IFC Act and the Multilateral Treaty

Section 3 of the IFC Act states that it applies notwithstanding anything to the contrary contained in any other law. The ITAT order mentions that although this is a *prima facie* reference to “*existing laws*” it ought to be extended to subsequent laws for the tax immunity to have some practical effect. The underlying rationale is to preserve the sanctity of the multilateral treaty in line with Article 51(c)²³ of the Constitution and the good faith requirement stemming from Article 26, Vienna Convention on the Law of Treaties, 1969.

Section 115-O also has non-obstante language but it is only with respect to the other provisions of the IT Act. Imposing DDT in a special section, outside the schedules, allowed two deviations from the general scheme of the IT Act – imposing the tax on the distributing company (akin to a transaction tax) rather than on the income earner *and* levying a flat rate (and not the progressive rate). The non-obstante language of the IFC Act is broader than that of the IT Act and thus must prevail.

Significantly, there is no explicit reference to IFC in the IT Act – neither in Section 115-O nor in Section 10²⁴ which is the umbrella provision enumerating exempt incomes. When the multilateral treaty was signed and the IFC Act was enacted, erstwhile Income-tax Act, 1922 was in place. Even this statute did not expressly cite IFC.

IFC's service tax liability under the pre-Goods and Services Tax (GST) regime was also questioned as there was no specific immunity for IFC under the Finance Act, 1994 that imposed service tax. The Customs, Excise and Service Tax Appellate Tribunal held that IFC would be immune despite the silence in

²³ Promotion of international peace and security. — The State shall endeavour to — (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another.

²⁴ Section 10 exempts the income of institutions like the European Economic Community derived from notified investments (Section 10(23BBB)); the SAARC Fund for Regional Projects (Section 10(23BBC)); Secretariat of the Asian Organization of Supreme Audit Institutions (Section 10(23BBD)); and domestic regulators such as the IRDAI (Section 10(23BBE)) and CERC (Section 10(23BBG)).

service tax law as immunity could arise also from the IFC Act.²⁵ The Central Board of Indirect Taxes and Customs has issued a circular,²⁶ clarifying that IFC is exempt for any services provided by it. Hence, legislative silence should not be interpreted as an intent to tax when a specialized legislation granting immunity exists.

ITAT's approach in holding that the IFC Act has an overriding effect produces an optimal outcome as it allows for harmonious interpretation²⁷ of both statutes. If this reading were not adopted, IFC would never be entitled to any tax immunity.

However, that is not all. The factual scenario must be eligible for immunity based on the agreed language. ITAT reasoned that once it is established that the IFC Act prevails over the IT Act, IFC enjoys immunity as it has been conferred with “*comprehensive exemption*” that extends to “*all manifestation of financial activity*”.²⁸ The ITAT order states that DDT is not relatable to the “*income*” of IFC by deferring to the Total Oil ruling which held that the DDT is a tax on the profits of the distributing company and not on the shareholder's income. Hence, the ITAT order does not deal with any arguments on “*income*” despite IFC's “*income*” being subject to an express immunity.

The reasoning presupposes that the fiscal immunity extends to all consequences across the lifecycle of IFC's “*operations and transactions*” irrespective of who bears the tax. However, there is little substantiation for adopting this reading. This was the missed opportunity as the ITAT ruling could have engaged deeper to identify the ambit of the clause. The author presents the various arguments that could guide this enquiry.

²⁵ *Coastal Gujarat Power Ltd v Commissioner of Service Tax*, MANU/CM/0769/2016 [26] (CESTAT Mumbai).

²⁶ Central Board of Indirect Taxes and Customs, *Circular No 83/02/2019–GST: Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)* (1 January 2019).

²⁷ *Star Television News Ltd. v Union of India*, [2009] 184 Taxman 400 (Bombay). The core premise is that the legislature does not intend to contradict itself. Therefore, if two legal provisions seem to clash, the court must interpret the provisions such that both can work harmoniously.

²⁸ *Polycab (n 1)* [24].

The key phrase within the immunity clause was “*operations and transactions*”. Schedule I, Section 1 of the IFC Act explains IFC's financing operations as encompassing investments in “*productive private enterprises*”. The term transaction is defined neither in the IFC Act nor the General Clauses Act, 1897. Black's Law Dictionary defines transaction as “*the act or an instance of conducting business or other dealings*” and as “*something performed or carried out*”.²⁹

IFC's investment into Polycab constitutes its “*operations and transactions*” authorized by the international agreement. Polycab distributes dividend based on its board's recommendation.³⁰ IFC merely accepts the dividend and does not play an active role. It is doubtful whether the immediate act in question - the passive receipt of dividends by IFC may constitute IFC's “*operations and transactions*”. Hence, to bring the immediate scenario within the immunity clause requires construing its true scope and whether the tax burden matters.

It may be contended that once the assessee falls within the exemption by satisfying the mandatory eligibility conditions (“*transactions and operations*”), Courts adopt a liberal reading of the exemption.³¹ If IFC is found to be eligible, the attention could turn to whether a liberal reading may extend also in relation to who bears the tax burden.

Albeit not directly relevant, within GST jurisprudence, courts have recognized that exemptions may be activity-specific or person-specific. An example of an activity-specific exemption is the GST exemption for renting of residential dwelling and ultimately used as residence. The Supreme Court

²⁹ Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson Reuters 2024) 1668.

³⁰ Regulation 80 of Table F (Schedule I) of the Companies Act 2013 states: “*The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.*”

³¹ *Commissioner of Customs (Import), Mumbai v Dilip Kumar and Co*, (2018) 9 SCC 1 [46], [47], [52].

inferred that the legislature intended that “*a rented property, that is used as residence should not suffer 18% GST or IGST*”. The exemption could not be denied based on who rents the dwelling.³² In this light, one contention could be to judge whether IFC's immunity is activity-specific. If so, a purposive reading may indicate that once the investment is made by IFC, the investment is immune from “*all taxation*” irrespective of other factors including who bears the tax given the pending controversy around the same, as explained in Part 1.

Another dimension is that the IFC Act emanates from a multilateral treaty. Supreme Court has held that “*in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations.*”³³ For bilateral tax treaties a purposive approach giving importance to workability and harmonization has been advocated.³⁴ The ITAT order adopts a purposive interpretation of the IT Act,³⁵ but may have benefited from engaging with whether a purposive reading of the IFC Act and multilateral treaty is merited.

International organizations (IOs) enjoy a wide range of immunities.³⁶ Fiscal immunities are granted to preserve the IO's independence *and* to avoid the IO's financial resources being returned to host states as taxes.³⁷ Muller argues that IOs are not immune from tax burdens passed on to them by others. For example, if a landlord passes down a general tax increase through a higher rent,

³² *State of Karnataka v Taghar Vasudeva Ambrish*, [2025] INSC 1380 [61]–[64].

³³ *Jolly George Verghese v Bank of Cochin*, 1980 SCR (2) 913, [11].

³⁴ *Hindalco Industries Ltd v Assistant Commissioner of Income Tax*, [2005] 2 SOT 528 (ITAT Mumbai).

³⁵ *Polycab (n 1)* [24].

³⁶ Organizations with broader political mandates enjoy wider immunities such as the UN is immune “*from every form of legal process*”. See, Chanaka Wickremasinghe, 'International Organizations or Institutions, Immunities before National Courts' in *Max Planck Encyclopedias of Public International Law* (Oxford University Press, July 2009) [2], [13], [22].

³⁷ Mirka Möldner, 'International Organizations or Institutions, Privileges and Immunities' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press) <https://opil.ouplaw.com> accessed December 30, 2025; Kirsten Schmalenbach, 'International Organizations or Institutions, General Aspects' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, last updated October 2020) <https://opil.ouplaw.com> accessed December 30, 2025.

the IO cannot claim immunity.³⁸ In the ITAT's own admission, DDT is not borne by IFC, so the effects on IFC are indirect - either because the tax is borne by Polycab or that Polycab may be induced to pass down the DDT burden through reduced dividends. Any judicial interpretation can benefit from the public international law jurisprudence.

Coming to the term “income”, after the Polycab order, in *Colorcon Asia Private Limited v. The Joint Commissioner of Income Tax*³⁹ (Colorcon) the Bombay High Court (HC) doubted the Total Oil view that the DDT is a tax on the distributing company. As the ITAT relied on Total Oil, Colorcon makes it possible for Polycab to argue that the dividend was IFC's income triggering the basic level of immunity under the IFC Act. However, the jury is still out as the legal issues including whether Colorcon lays down the correct position of law has been referred to a larger bench.⁴⁰

Colorcon was decided in the tax treaty context. For the author, Colorcon's fallacy is that it holds the DDT to be a tax on the shareholder's income despite acknowledging that the incidence falls on the distributing company. Tax treaties primarily apply when the same person is subject to double taxation on the same item of income (juridical double taxation). If indeed the DDT is borne by the distributing company, shareholder does not suffer juridical double taxation. Academic scholarship on DDT has argued that DDT is not a tax on income.⁴¹ The taxable event of DDT is dividend distribution. Although peculiar,

³⁸ Sam A. Muller, Chapter 8, 'Fiscal, Customs, and Financial Immunities' in *International organizations and their host states: aspects of their legal relationship*, Legal aspects of international organization, Kluwer Law International, 1995, pp. 246-247.

³⁹ *Colorcon Asia (P) Ltd v Joint Commissioner of Income-tax*, [2025] 181 Taxmann.com 301 (Bom).

⁴⁰ *Foseco India Ltd. Company v Assistant Commissioner of Income Tax*, [2026] 185 taxmann.com 1015 (Bombay HC).

⁴¹ Dhruv Janssen-Sanghavi, 'The Curious Case of the Indian Dividend Distribution Tax – Inverse Split-rates on Corporate Profits? Or a Source-agnostic Levy?' (Kluwer International Tax Blog, 22 August 2019) <https://legalblogs.wolterskluwer.com/international-tax-law-blog/the-curious-case-of-the-indian-dividend-distribution-tax-inverse-split-rates-on-corporate-profits-or-a-source-agnostic-levy/> accessed 30 December 2025; T. Jain, Dividend Distribution Tax: A Rejoinder to 339 ITR (J.) 52, (2012) 343 ITR (J) 42-51 at 45 available at <https://ssrn.com/abstract=2077968> accessed 30 December 2025; S. Rao, Chapter 15: Tax system design – an analysis of some design choices made by the Indian Income Tax Act, 1961 in *Essays on International Taxation Liber amicorum Nishith Desai* (D. Sanghavi (ed.) Bloomsbury 2020) pp.488-489.

this explains the special non-obstante language within Section 115-O. Applying Colorcon here, if incidence of DDT is indeed on Polycab, the impact on IFC may be merely indirect, so one needs to justify if and why fiscal immunity must be extended to IFC within the context of the multilateral treaty.

Despite the problem with the incidence point in Colorcon, the HC makes a very pertinent point- “*States are expected to fulfil obligations under the treaty in good faith and this include the obligation not to defeat the purpose and object of the treaty as the obligations are rooted in customary international law*”⁴².

This statement rings true even for this dispute. The DDT was not in place when the multilateral treaty or the IFC Act entered into force. Dividend was considered as the shareholder's income until May 1997.⁴³ When the multilateral treaty and IFC Act were enacted, drafters may have thus intended that IFC's income included dividends which was to be tax exempt. Unlike in bilateral tax treaties where states must notify new taxes to treaty partners⁴⁴ and treaty renegotiation is initiated more commonly (including in relation to the DDT issue), multilateral agreements do not afford such opportunities for notification and renegotiation is far more complex if the issue prompting change is confined to one or a few countries. Going back to the original intent helps frame the dispute better - whether tax design choices made to suit domestic administrative concerns can be allowed to retroactively override multilateral commitments.

B. Interpretation of Section 115-O(1A)(ii) of the IT Act

The second reason given by the ITAT turns on the interpretation of Section 115-O(1A)(ii) of the IT Act and that IFC must be treated at par with the NPS Trust. The approach of the ITAT amounts to a misstep as outlined below.

⁴² *Colorcon Asia (P) Ltd v Joint Commissioner of Income-tax*, [2025] 181 Taxmann.com 301 (Bom) [46].

⁴³ Although dividend was taxed in the hands of the distributing company, the shareholder was allowed to claim credit for the tax paid by the company and was required to pay any remaining amount to be paid. This system was considered cumbersome and was criticized by the Law Commission of India. See Law Commission of India, *Twelfth Report on the Income-tax Act, 1922* (1958) [40] 12. Eventually, the classical system was adopted from 1960 and then in the IT Act until 1997.

⁴⁴ See OECD, *Model Tax Convention on Income and on Capital* (OECD Publishing, 2017) Art 2(4).

Section 115-O(1A)(ii) is akin to a tax exemption provision as it precludes the dividend pay out to any person for, or on behalf of, the NPS Trust from the tax base of the DDT. Perusing the language of the provision, it is unambiguous and sets up a clear eligibility condition. Dividend paid out in only one instance - to any person for, or on or behalf of, the NPS Trust is clearly enumerated by the provision. Relying upon the maxim *expressio unius est exclusio alterius*, when there is an express mention of exemptions for only one entity, it means that others are excluded.⁴⁵ In other words, given the explicit mention of the NPS Trust, it is apparent that the legislature knew how to create a DDT carve-out and the omission of the IFC is a deliberate legislative choice. Once the provision is unambiguous there is little scope to invoke legislative intent, equitable construction and purposive interpretation.

Equating the NPS Trust and the IFC and reading in a tax exemption by saying that the express mention of NPS is indicative of a general policy against taxing dividends paid to exempt entities is flawed as it not only ignores the differences but also the specific tax status given to the NPS Trust.

The NPS was launched by the Indian government to encourage individuals to save for retirement. It was first rolled out as a mandatory contribution for all new central government employees (except for those in the armed forces) joining from January 1, 2004. Over the years the reach has widened, contributions are accepted from all Indian citizens (living in India or abroad) between 18 and 70 years of age.⁴⁶ The NPS Trust was constituted by the Pension Fund Regulatory and Development Authority under the Indian Trusts Act, 1882. The NPS Trust is the registered owner of all assets of the NPS on behalf of the beneficial owners (contributors/subscribers). The NPS Trust is tasked with the responsibility of monitoring the pension funds and investment activities to secure the best interests of the contributors/ subscribers.⁴⁷

⁴⁵ Ruth Sullivan, *Statutory Interpretation* (2nd edn, Irwin Law 2007) 190–93.

⁴⁶ NPS Trust, About NPS <https://npstrust.org.in/about-nps> accessed Date 29 December 2025.

⁴⁷ Pension Fund Regulatory and Development Authority (National Pension System Trust) Regulations 2015, reg 9.

Given its significance, three tax policy concessions were made in favour of the NPS Trust, as described in the explanatory memorandum to the Finance Act (no.2) of 2009. First, the NPS Trust was made a “*complete pass-through*” entity for tax purposes. This means that the beneficial owners were to pay taxes and not the NPS Trust. Second, to encourage saving through the NPS Trust, it was given an Exempt-Exempt-Taxed (EET) status.⁴⁸ Initial contributions,⁴⁹ and income earned,⁵⁰ during holding period is exempt while final withdrawal is taxable. Third, it was explicitly decided that there should be “*no incidence of taxation at the accumulations stage*”,⁵¹ to incentivize savings.

To implement the last objective, Section 115-O(1A)(ii) and Section 197A(1E) were introduced. While Section 115-O(1A)(ii) legislated that dividend distributed to any person for, or on behalf of, the NPS Trust would not be subject to DDT, 197A(1E) legislated that no tax would be deducted on any payment made to any person for, or on behalf of, the NPS Trust. Owing to these provisions, the contributor would receive larger sums of money which would accumulate and ultimately, yield a larger retirement corpus.

In contrast, the IFC is not a trust enjoying pass through status. It is neither a custodian of individual savings nor operates within India's pension architecture. In equating the NPS Trust and the IFC, the ITAT appears to conflate the second and third concessions made. The operative lines of the ITAT order reads as follows: “*The reduction of the amount of dividend paid is because any income received by any person under the New Pension System Trust is exempt from tax.*”⁵² Subsequently, there is reference to the “*principle enshrined clause (ii) of sub section (1A) of section 115 O*”.⁵³

⁴⁸ Currently, NPS Trust enjoys EEE (exempt, exempt and exempt) status.

⁴⁹ Income-tax Act 1961, s 80CCD.

⁵⁰ Income-tax Act 1961, s 10(44).

⁵¹ Ministry of Finance, Explanatory Memorandum to the Finance (No 2) Bill 2009 (2009) 13 https://www.indiabudget.gov.in/budget_archive/ub2009-10/mem/mem1.pdf accessed 30 December 2025.

⁵² *Polycab India Ltd* (n 1) [19].

⁵³ *ibid* [24].

As discussed above, the tax regime for NPS Trust was aligned with the EET system which would require income earned to be exempt. This was done through Section 10(44). However, an additional and independent concession was to ensure tax neutrality at accumulation. Section 10(44) would not, by itself, ensure that dividend paid out to the NPS Trust would be removed from the DDT tax base as it talks only of exempting income in the hands of the income earner and says nothing about the distributing company. Hence, there was a need to bring in a specific amendment vis-à-vis the dividend payout by the distributing company through Section 115-O(1A)(ii) in 2009.

Hence, equating the two entities and reading in a “*general principle*” that dividends paid to tax exempt entities must not be subject to DDT is unwarranted when looking into the concessions that were specifically granted to the NPS Trust. As these concessions were made in 2009 the government appears to have specifically contemplated the DDT and sought to relieve the beneficial owners from any tax consequences.

The author's view is that the legislative intent and thereby, the concessions made in favour of the NPS Trust and the IFC are not identical. The immunity extended to the NPS Trust is based on incentivizing retirement savings but IFC's status-based immunity is secured to preserve its autonomy. The legal logic for one cannot be extrapolated to the other. Such reading amounts to supplying words in a statute which is not appropriate. If such reading were to be taken, one could extend this logic to several other instances where the shareholder enjoys a tax exemption (such as charitable trusts, government organizations, small retail shareholders, sovereign wealth funds)⁵⁴ which would open a pandora's box. The implications would be felt way beyond IFC.

IV. CONCLUSION

The Polycab dispute brings to light a tax dispute because of the unilateral change in the domestic policy of dividend taxation over the years. One of the reasons cited by the government for imposing the DDT was administrative

⁵⁴ The orders of the Assessing Officer and CIT(A) mention that this reading would open the pandora's box as it would extend the exemption to all tax-exempt shareholders.

convenience. Perhaps while the decision to impose DDT was motivated by domestic capacity constraints, the spillover effects of this choice on international commitments was not as self-evident. However, over the years, the problems became apparent. The concerns of foreign shareholders under bilateral tax treaties were in fact one of the reasons cited for switching to the classical system for dividend taxation in 2021.

While the DDT legacy issues are far from settled in the context of tax treaties, the Polycab dispute brings up the issue to the fore again. International organizations including IFC have also battled litigation on other immunity clauses.⁵⁵ The fiscal immunity clause brings up some unique aspects in terms of the intended ambit and relevance of the tax incidence. The decision taken in this regard will have ramifications for similarly worded fiscal immunity clauses in legislation applying to other international organizations such as the Asian Development Bank and the United Nations.

When answering the Polycab dispute, the Court is faced with the dilemma of balancing the international obligation arising from the IFC legal framework with the domestic law changes. Disputes pertaining to public international law are better decided on treaty principles rather than on flawed analogies emanating from domestic legislation. Courts may especially benefit from looking to the original intent of multilateral treaties as notifications pertaining to subsequent domestic law modifications are not contemplated and renegotiations are more complicated. The case comment seeks to uncover the many layers to prove that there is much more than meets the eye in a bid to guide future litigation on similar disputes.

⁵⁵ See *Jam v. IFC* 139 S. Ct. 759 (2019) (SCOTUS). While IFC argued for absolute immunity, the US Supreme Court held that IFC enjoys only restrictive immunity when its actions are not purely sovereign in nature.



NATIONAL LAW UNIVERSITY DELHI

Sector-14, Dwarka, New Delhi-110078

Phone : +91 11 280 34253, Fax : +91 11 280 34256

Website : www.nludelhi.ac.in