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

+ **INCOME TAX APPEAL NO. 92/2013**

Date of decision: 16th July, 2013

COMMISSIONER OF INCOME TAX DELHI -IV

..... Appellant

Through Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

versus

DELHI TOURISM & TRANSPORTATION DEVELOPMENT
CORPORATION LTD

..... Respondent

Through Ms. Prem Lata Bansal, Sr. Advocate
with Mr. Ruchir Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the parties, the following
substantial question of law is framed:

“Whether the Income Tax Appellate
Tribunal was right in holding that assessee is
entitled to deduction under Section 80M of the
Income Tax Act, 1961?”

2. We have heard learned counsel for the parties on the aforesaid
question and proceed to dictate our judgment.



3. Respondent is a domestic company wholly owned by the Government of NCT of Delhi and the Assessment Year involved is 1993-94. The assessee had disclosed income of Rs.14,26,29,843/- during the assessment year in question. Deduction under Section 80M of the Income Tax Act, 1961 (Act, for short) was claimed on the ground that the assessee had received dividend of Rs.50,00,000/- in this year from Unit Trust of India (UTI). The Assessing Officer disallowed the claim for deduction under Section 80M observing that the respondent-assessee had not produced evidence in support of payment of dividend within the specified time and as per the audit statement the respondent had proposed dividend of Rs.36,83,000/- and the dividend had not been paid. There is no further discussion in the order of the Assessing Officer.

4. Commissioner of Income Tax (Appeals) [CIT (Appeals), for short] affirmed the said view observing that the dividend distribution related to earlier years, i.e., Financial Years 1990-91 and 1991-92 and as such deduction under Section 80M of the Act was not permissible. He also recorded that the dividend of Rs.48,72,518/- was paid to the shareholders of the company by four cheques dated 31st March, 1993, which were encashed on 21st April, 1993. We record here that the CIT (Appeals) has not indicated or mentioned why the dividend distributed related to Financial Years 1990-91 and 1991-92. He has not elaborated



upon the said statement. As noticed above, the order of the Assessing Officer also does not elaborate and deal with the said aspect.

Officer also does not elaborate and deal with the said aspect.

5. The Income Tax Appellate Tribunal has recorded some factual details. It has recorded that the respondent-assessee had declared dividend of Rs.48,72,518/- relating to Financial Years 1990-91 and 1991-92 but the dividends were paid on 21st April, 1993 by cheques dated 31st March, 1993. CIT (Appeals) had held that benefit of Section 80M would be only relatable to dividends paid and distributed and were relatable to the Assessment Year 1993-94 or Financial Year 1992-93.

6. In other words, the contention of the Revenue is that each assessment year is a self contained and as dividend of Rs.48,72,518/- related to Financial Years 1990-91 and 1991-92, deduction under Section 80M cannot be allowed on the basis of dividend income of Rs.50,00,000/- received in the Financial Year 1992-93. This is because the dividend distributed was for Financial Years 1990-91 and 1991-92 and deduction under Section 80M was claimed for the year ending 31st March, 1993.

7. Ex facie, there appeared to be some merit in the contention raised by the appellant-Revenue but on deeper scrutiny, we do not find that ground or justification is made out to interfere with the order of the tribunal. Section 80M as it existed and applicable to the Assessment



Year 1993-94 was as under:

“80M. Deduction in respect of certain intercorporate dividends.--(1) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to,--

(i) in the case of a scheduled bank or a public financial institution, or a State financial corporation or a State industrial investment corporation or a company registered under section 25 of the Companies Act, 1956 (1 of 1956), sixty per cent. of the income by way of dividends from another domestic company;

(ii) in the case of any other domestic company, so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date:

Provided that where any domestic company receives any income by way of dividend from the units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), such domestic company shall, subject to the aforesaid provisions, be eligible for deduction to the extent of—

(a) four-fifth of such income in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1994 ;

(b) two-fifth of such income in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1995, and no deduction shall be allowed on such income in respect of the previous year relevant to



the assessment year commencing on the 1st day of April, 1996, and any subsequent previous year.

(2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under clause (ii) of sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

(3) Where the dividend distributed is in respect of any period comprised in the previous year ending on the 31st day of March, 1990, no deduction shall be allowed in respect of such dividend.

Explanation.--For the purposes of this section, the expressions—

(i) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), and which is a domestic company;

(ii) "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(iii) "State financial corporation" and "State industrial investment corporation" shall have the same meanings as in section 43B;

(iv) "due date" means the date for



furnishing the return of income under sub-section (1) of section 139.”

8. Section 80M(1) for the purpose of interpretation can be segregated into two parts or postulates two requirements. The first requirement is that gross income of a domestic company in the previous year should include income by way of dividend from another domestic company. The said condition it is accepted is satisfied as the respondent-assessee had received dividend of Rs.50,00,000/- from another domestic company, i.e., UTI. The second part of Section 80M(1) states that in the year in which the dividend was received, the assessee company would be allowed a deduction of an amount equal to and not exceeding the amount of dividend distributed on or before the due date. Due date as per Explanation to Section 80M means the date of filing of return of income under Section 139(1). If we go by the order of the CIT (Appeals) and the tribunal, they have accepted the plea of the respondent-assessee that the dividend was paid to the shareholders of the assessee before due date vide cheques dated 31st March, 1993, which were encashed on 21st April, 1993.

9. The requirement of the second part of Section 80M(1) is that the company, which has received dividend from a domestic company should have distributed dividend not exceeding the amount of dividend received on or before the due date. The second part of Section 80M(1)



does not stipulate that the dividend, which was distributed, must relate to the year in question to which the return relates. The only requirement or condition is that the dividend should have been distributed in the year in question or on or before the due date. The due date has been specified to mean the date of furnishing of return under Section 139(1) of the Act.

10. The view we have taken is supported by sub-section (2) to Section 80M. The said sub-section stipulates that where dividend was distributed in a previous year, no deduction would be allowed in respect of the said amount in any other year. In other words, the deduction is to be allowed in the year when the dividend was distributed and not in any other year. Sub-section (3) to Section 80M states that no deduction would be allowed under the said Section where dividend distributed was in respect of periods prior to 31st March, 1990. The said sub-section supports the contention of the respondent-assessee that when dividend distributed relates to period prior to 31st March, 1990, deduction under Section 80M as applicable cannot be allowed.

11. The second part of Section 80(1) of the Act, does not specifically postulate or prescribes the requirement that dividend distributed must match or relate to the assessment year itself. There is good reason, why the Legislature has not prescribed the said



condition/requirement. Dividends can be declared and are normal declared after the end of the financial year and when financial results are known. Payment of dividend in several cases may spill over and distribution can and does take in the subsequent year.

12. We are also inclined to accept the view of the respondent-assessee for another important reason, even if we feel that the contention of the Revenue is plausible. The reason is that Bombay High Court in *Commission of Income Tax versus Saumya Finance and Leasing Co. P. Ltd.*, [2008] 300 ITR 422 (Bombay) has taken an identical view and this judgment was noticed and followed by the tribunal. Facts in the case of *Saumya Finance and Leasing Co. P. Ltd.* (supra) are almost similar though not identical. In the said case, the assessee company had received dividend in the Financial Year 1996-97 but had declared interim dividend for the Financial Year 1997-98. In the returns filed for the Financial Year 1996-97, deduction under Section 80M was claimed on account of dividend earned and received in the said previous year. Bombay High Court dismissing the appeal of the Revenue, observed:-

“5. On the bare reading of the Section it is clear that the deduction as permitted is of an amount equal to so much of the amount of income by way of dividend declared by the Company as does not exceed the amount of dividend



distributed by the assessee company on or before the due date.

6. It is clearly seen that the section does not provide for the nature of the dividend distributed by the assessee company. It does not state that the nature of the dividend distributed must be for the financial year under assessment. Accepting the argument of the revenue will amount to laying down an additional restriction to the effect that the dividend distributed by the Assessee Company must be for the financial year under assessment. Laying down such restricting qualification, in our view, will amount to doing violence to the plain and clear meaning of the words as contained in Section 80M.”

13. The contention of the Revenue that the interpretation given by the Bombay High Court would result in absurdity was rejected as the intention of the legislature in enacting Section 80M was clear, i.e., to ensure that the dividend income received by the assessee company would be permitted as a deduction only if it was redistributed as dividend to the shareholders. The emphasis was on the word “distribution” and not on the “period” to which the dividend paid related. The possibility of misuse of the said provision appears to be remote as normally dividends declared have to be paid within the statutory time limit fixed under the Companies Act, 1956 and violations invite punishment and penalty. This is a peculiar case of a Government company wherein dividend for Financial Years 1990-91



and 1991-92 got distributed on 23rd April, 1993, i.e. the date encashment of cheques dated 31st March, 1993. We have also noted that the provision, Section 80M would become illusory, if we accept the interpretation of the Revenue, as it would ignore the factum that dividends are mostly declared after the end of the financial year, upon approval of accounts and in many, if not in majority, distribution may be after “due date” for filing of the return of income for the relevant year. Thus, interpretation of the Revenue if accepted, would result in denial of benefit under Section 80M in most cases. Legislature being aware and conscious has deliberately not prescribed and stipulated principle of matching i.e. dividend received and dividend distributed must relate to the same assessment year.

14. In view of the aforesaid position, we answer the question of law in affirmative, i.e., in favour of the respondent-assessee and against the Revenue. The appeal is dismissed. There is no order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

JULY 16, 2013
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