
(2007) 04 BOM CK 0138
In the Bombay High Court

Commissioner of Income Tax

APPELLANT

Vs

Jamnalal and Sons

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (2007) 04 BOM CK 0138

Hon'ble Judges : J.P. Devadhar, J;B.P. Dharmadhikari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.P. Devadhar J.

1. Heard Mr. A. S. Jaiswal, learned Counsel for the applicant and Mr. C.J. Thakkar, learned Counsel for the respondent.

2. These three applications filed by the revenue u/s 256(2) of the Income Tax Act, 1961 were admitted on the following questions of law:

1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee is an industrial company to which provisions of Section 104 of the Income Tax Act do not apply ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee-company is eligible for deduction u/s 80M of the Income Tax Act in respect of share income from the firms receiving the dividend income from other domestic companies ?

3. As regards question No. 1 is concerned, in the assessee's Own case for the earlier years being I. T. A. No. 35 of 1995, we have rejected similar question raised by the revenue on 21-4-2007 (Commissioner of Income Tax Vs. Jamnalal Sons Ltd., . Accordingly, question No. 1 raised in the present application is rejected.

4. As regards question No. 2 is concerned, the assessee-company which is a domestic company was a partner in three different firms. The said firm derived dividend income from other domestic companies. The assessee claimed deduction u/s 80M of the Act in respect of the assessee's income from the firm which was relatable to the dividend income received by the firm from the domestic companies. The assessing officer relying upon the decision of the Orissa High Court in the case of Commissioner of Income Tax Vs. Janardan Subudhi, , denies deduction u/s 80M on the ground that the assessee had not directly received the dividend income from the domestic companies. Being aggrieved by the aforesaid order the assessee filed an appeal before the Commissioner (Appeals), who held that the assessee, an industrial company had received the dividend income from a domestic company and, therefore, the assessee is entitled to the deduction u/s 80M of the Act. On further appeal filed by the revenue , the Tribunal upheld the order of the Commissioner (Appeals) by following the decision of this Court in the case of Commissioner of Income Tax Vs. Gopalkrishna M. Singre and others, . Since the reference application filed by the revenue u/s 256(1) of the Act was dismissed, the revenue has filed this application.

5. This Court in the case of Commissioner of Income Tax Vs. Gopalkrishna M. Singre and others, . has held that in the light of Section 67(2) of the Act where a partner receives income from a firm then such income should be assessed in the hands of the partner in the same manner in which the said income was assessed in the hands of the firm. Although this Court considered the effect of Section 67(2) of the Act in connection with the deduction u/s 80L of the Act, the ratio laid down therein would apply while considering the deduction u/s 80M as well. The argument of the revenue that the assessee, a domestic company, must receive the dividend directly from another domestic company to avail of the benefit u/s 80M of the Act is not borne out from the language used in the section and Mr. Jaiswal, learned Counsel for the revenue fairly stated that apart from the heading, "Deduction in respect of certain inter corporate dividends", there is nothing in the body of Section 80M to support the contention of the revenue.

6. In this view of the matter, the ratio laid down by this Court in the case of Commissioner of Income Tax Vs. Gopalkrishna M. Singre and others, would be squarely applicable to the facts of the present case.

7. Accordingly, all the applications are dismissed. Rule discharged. No order as to costs.