
(1992) 01 CAL CK 0025

In the Calcutta High Court

Case No : Income-tax Reference No. 135 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Oriental Co. Ltd.

RESPONDENT

Date of Decision : 29-01-1992

Acts Referred:

Income Tax Act, 1961 — Section 154, 80M

Citation : (1996) 130 CTR 233 : (1995) 215 ITR 844 : (1993) 71 TAXMAN 92

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : None, for the Appellant; R.N. Dutt, amicus curiae, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(2) of the Income Tax Act, 1961, for the assessment years 1977-78 and 1978-79, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the Income Tax Officer had exceeded his jurisdiction in computing the net dividend income and then allowing relief u/s 80M by passing the rectification order u/s 154 of the Income Tax Act, 1961 ?"

2. Shortly stated, the facts are that the assessee is a limited company deriving income from business in money-lending, interest on securities and dividend. The Income Tax Officer had completed the original assessments allowing reliefs u/s 80M of the Act on the gross amounts of dividend following the decision of the Supreme Court in the case of Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, . Subsequently, the Income Tax Officer passed orders u/s 154 on October 25, 1983, reducing the reliefs given in the original assessments. The Income Tax Officer calculated the proportionate expenses relatable to the dividend income of the assessee on estimate. This, he deducted and estimated the expenses from the gross dividends and allowed reliefs u/s 80M

on the net balances. Thus, the Income Tax Officer reduced the reliefs u/s 80M by passing the rectification orders in which he reduced the amounts of dividends by estimating the amounts of expenses and allowing reliefs on the net balances so arrived at.

3. On appeal, the assessee contended that the Income Tax Officer was not justified in assuming jurisdiction u/s 154 to estimate the expenses attributable to the earning of dividend income and reduce the reliefs u/s 80M by confining the said reliefs to the net amounts after deducting the said expenses. It was also urged that such an exercise involved debatable issues on which there could be more than one opinion and so the said issues were outside the purview of Section 154 of the Act. The Commissioner of Income Tax (Appeals) agreed with the contention of the assessee that there could be a debate about the exact amounts that could be said to be relatable to the earning of dividends and so it was not a matter which could be said to be a mistake apparent from the record. Relying on the Supreme Court decision in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , the Commissioner of Income Tax (Appeals) held that the Income Tax Officer erred in passing the rectification orders which he cancelled.

4. The Department appealed to the Tribunal contending that the Commissioner of Income Tax (Appeals) erred in his decision. The Tribunal found that in the case of this very assessee a similar point has been decided in favour of the assessee. That decision, in turn, was based on an earlier decision of the Tribunal dated January 1, 1986. In all these cases, the Tribunal had arrived at the conclusion that the amount of expenses relatable to the earning of dividend cannot be calculated for the first time in a rectification order as it was a matter open to debate and challenge. Following the aforesaid orders, the Tribunal upheld the order of the Commissioner of Income Tax (Appeals) and dismissed the Departmental appeal.

5. At the hearing, none appeared for the assessee ; we asked Mr. R.N. Dutt, learned advocate, to assist this court which he has ably done.

6. The precise dispute before the authority was not whether the relief under, Section 80A should be allowed on gross dividend or net dividend but whether any part of the expenditure is allowable to the earning of the dividend.

7. Our attention has been drawn to a decision of this court in the case of Commissioner of Income Tax Vs. National Insurance Co. Ltd., . In that case, the Division Bench held that, in view of Section 80AA, where deduction is allowable u/s 80M, it has to be allowed with reference to the amount of dividend computed in accordance with the provisions of the Income Tax Act. Therefore, expenditure, if any, incurred in earning such dividend income, has to be taken into consideration. But this decision will have no application to the facts and circumstances of this case.

8. In this case, in the assessment made by the Income Tax Officer, he did not

deduct any amount of expenditure from the dividend income notwithstanding that certain expenditure was incurred by the assessee for earning such dividend. Had it been so, we would have no hesitation to hold that in view of the amendment brought in Section 80AA, the assessee is entitled to relief u/s 80M only on the net dividend included in the assessment. In this case, originally no deduction was made. It appears from the order passed u/s 154 of the Act that the Income Tax Officer has estimated a part of the entire expenditure as being allocable for earning the dividend. The dispute was, therefore, whether in the rectification proceedings, such allocation of expenditure between business income and income from other sources can be made. In our view, such a dispute cannot be the subject-matter of rectification proceedings u/s 154, if the Income Tax Officer would have rightly or wrongly allocated a part of the expenditure towards earning of the dividend income but none the less allowed relief on the gross dividend. In that event, the contention raised by the Revenue would have substance.

9. Having regard to the facts and circumstances of this case, we are of the view that the Tribunal came to the correct conclusion on the facts. We, therefore, answer this question in the affirmative and in favour of the assessee.

10. There will be no order as to costs.

Shyamal Kumar Sen, J.

I agree.