(1989) 02 MAD CK 0032

In the Madras High Court

Case No : Tax Case No. 1107 of 1979

Commissioner of Income Tax APPELLANT

Vs

V. Ramakrishna and Sons RESPONDENT

Date of Decision : 08-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 80A, 80J, 80M, 99(1)

Citation : (1989) 02 MAD CK 0032

Hon'ble Judges : V. Ratnam, J;Bhakthavatsalam, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; None, for the Respondent

Judgement

Ratnam, J.—At the instance of the Revenue, u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as ""the Act""), the following

question of law has been referred to this court for its opinion :

Whether, on the facts and in the circumstances of he case, the Appellate Tribunal was right in holding that deduction u/s 80M should be allowed

on the gross amount of dividend of Rs. 9,54,744 and not on the net dividend after deduction of interest paid on the capital borrowed for

investments ?

2. The assessee is a private limited company and for the assessment year 1971-73, a return was filed disclosing an income of Rs. 2,52,345. While

doing so, the assessee debited Rs. 1,48,442 being the interest paid by it on monies borrowed to the profit and loss account. The Income Tax

Officer held that inasmuch as borrowed funds had been utilised by the assessee in making investments, the interest attributable to such borrowed

funds was to be deducted from the income chargeable under the head ""Other sources"" and could not be deducted in computing the business

income. Accordingly, he deducted Rs. 94,864 from Rs. 9,54,774 being the income chargeable under the head ""other sources"" and computed the

net income under that head at Rs. 8,59,910. Regarding the deduction allowable u/s 80M of the Act, he was of the view the only 60% of the

dividend income could be allowed and not 60% on the gross dividend of Rs. 9,54,774, as claimed by the assessee. Accordingly, he computed the

deduction allowable u/s 80M of the Act at Rs. 5,15,946 and determined preferred an appeal to the Appellate Assistant Commissioner contending

that the entirety of he interest paid should have been deducted from the business income and that 60% of the gross dividend income should have

been deducted u/s 80M of the Act. The Appellate Assistant Commissioner accepted the claim of the assessee that 60% of the gross dividend

income should have been deducted and in view of that he did not proceed to consider the question whether the entirety of the interest payment

should have been deducted from the business income. On appeal by the Revenue before the Tribunal, it was contended that only 60% of the net

dividend income should be allowed u/s 80M of the Act, but the Tribunal, purporting to follow the decision of this court in Madras Auto Service

Vs. Income Tax Officer, , held that the expression ""dividend"" used in section 99(1)(iv) of the Act could not be considered as net dividend and that

the stand taken by the Department that only 60% of the net dividend should be allowed as deduction cannot be countenanced and further that u/s

80M of the Act, the deduction has to be computed with reference to the gross dividend and not the net dividend. That is how the matter has come

up before us on the question of law set our earlier. Though the assessee has been served in this reference, it has not appeared either through

counsel or any other representative and learned counsel for the Revenue placed before us all the relevant materials.

3. Learned counsel for the Revenue contended that only the net dividend should have been considered for allowance as a deduction u/s 80M of

the Act and that the Tribunal erred in holding that such allowance ought to be on the basis of the gross dividend. Reliance was also placed by

learned counsel on the decision in Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, .

4. We have carefully considered the submission made by learned counsel for the Revenue and we are of the view that his contention is well

founded. In Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, , the Supreme Court had occasion to go into the question of the

interpretation of section 80M of the Act, though in the context of its constitutional validity as well. Referring to the opening words of section 80M

of the Act, the Supreme Court pointed out that those words describe the condition which must be fulfilled in order to attract the applicability of the

proviso contained in sub-section (1) of section 80M of the Act and that condition is that the gross total income of the assessee must include income

by way of dividend from a domestic company and in accordance with the provisions of the Act, i.e. after deducting interest on monies borrowed

for earning such income. It was also further pointed out that the full amount of dividend received by the assessee would not be included in the gross

total income, but would only be the amount of divided as computed in accordance with the provisions of the Act and if that be so, the deduction

required to be allowed u/s 80M of the Act is liable to be calculated with reference to the amount of dividend computed in accordance with the

provisions of the Act forming part of the gross total income and not reference to the full amount of dividend received by the assessee. In view of

this clear pronouncement of the Supreme Court, we are of the view that the conclusion arrived at by the Tribunal is erroneous and cannot be

sustained.

5. We may also point out that the assessee had, before the Appellate Assistant Commissioner, claimed that the entirety of the interest paid should

have been deducted from the business income. But the Appellate Assistant Commissioner did not consider this plea as noticed earlier. The

Tribunal also had not considered the question whether the whole amount should allowed under ""Business"". A consideration of that question would

be necessary before the assessee can avail itself of the benefit of section 80M of the Act. Since this aspect had not been dealt with by the Tribunal

in the course of its order, we are of the view that the matter has to be again looked into by the Tribunal for working out the relief that any be

available to the assessee. We, therefore, answer the question referred to us in the negative and in favour of the Revenue. There will be, however, no order as to costs.