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(1986) 09 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Income Tax Reference No. 8 of 1978

Shekhavati General Traders Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-09-1986

Acts Referred:
Income Tax Act, 1961 — Section 80AA, 80M

Citation : (1987) 63 CTR 138 : (1987) 167 ITR 116

Hon'ble Judges : J.S. Verma, C.J;Mohini Kapur, J

Bench : Division Bench

Advocate : L.L. Sharma, for the Appellant; R.N. Surolia, for the Respondent

Judgement

1. This reference u/s 256(1) of the Income Tax Act, 1961, is at the instance of the assessee to answer the following question of law:

" Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 80M of the Income Tax Act, 1961, the Income Tax Appellate Tribunal was justified in holding that deduction u/s 80M should be given on the net dividend income, i.e., after deducting proportionate expenses ?"

2. The relevant assessment year is 1973-74. The assessee is a limited company. During the corresponding previous year, the assessee received dividend income of Rs. 6,81,643. A deduction of Rs. 3,81,311 was made in accordance with Section 80K of the Act and worked out the balance at Rs. 3,00,332. Out of this amount, the Income Tax Officer deducted Rs. 18,300 as expenses giving the net dividend income at Rs. 2,82,032. The Income Tax Officer granted relief in accordance with Section 80M of the Act at 60% of this amount, i.e., the net dividend income. The assessee pre" ferred an appeal to the Appellate Assistant Commissioner which was dismissed, affirming the view taken by the Income Tax Officer regarding the construction of Section 80M of the Act. The assessee''s further appeal to the Tribunal has also failed. The Tribunal also rejected the assessee''s contention that the benefit in accordance with Section 80M of the Act

is to be computed on the basis of the gross dividend income instead of net dividend income. Aggrieved by the view taken by the Tribunal, the assessee sought a reference to this court which has led to the above question of law being referred to this court for our decision.

3. In view of the law as settled by the recent decision of the Supreme Court in Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, the reference has to be answered against the assessee. No doubt Section 80M of the Act was earlier construed by the Supreme Court in Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, , in the manner contended by the assessee, taking the view that the benefit u/s 80M of the Act had to be computed on the basis of the gross dividend income and not on the net dividend income. Thereafter, the Legislature stepped in and the Act was amended by inserting Section 80AA, retrospectively with effect from April 1, 1968, with a view to overcome the Supreme Court case in Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, , by clearly providing that this benefit u/s 80M was to be computed on the basis of the net dividend income and not gross dividend income. This amendment led to a challenge to its constitutional validity before the Supreme Court and the decision of the Supreme Court in that case is reported in Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, . A larger Bench of the Supreme Court took the view that the earlier decision in Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, by a smaller Bench was incorrect and that, properly construed, Section 80M, as it stood from the very outset, gave benefit thereunder only on the basis of net dividend income and not gross dividend income. Accordingly, it was held that the insertion of Section 80AA was merely to declare the law as it existed from the very outset and not to introduce an additional tax burden retrospectively. After this decision of the Supreme Court, there can be no doubt that the view taken by the Tribunal in the present case was correct.

4. Consequently, the reference is answered in favour of the Revenue and against the assessee as under :

" The Tribunal was justified in construing Section 80M of the Income Tax Act, 1961, to mean that the deduction thereunder should be given only on the net dividend income. "

5. There will be no order as to costs.

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