

Assistant Commissioner of Vs. Sinora Trading Ltd

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Feb-26-1999

Appellant : Assistant Commissioner of

Respondent : Sinora Trading Ltd

Judgement :

1. The only issue arising out of this appeal relates to the computation of deduction under section 80M of the Income-tax Act, 1961.
2. The brief facts of the case are these. The assessee is a dealer in shares and synthetic fabrics. During the year under consideration the assessee purchased shares worth Rs. 498.86 lakhs and sold the shares worth Rs. 182.60 lakhs. There was opening stock of shares of Rs. 150.57 lakhs and closing stock of Rs. 412.55 lakhs. However, there was no dealing in synthetic fabric in this year. In addition to this, the assessee rendered certain services, against which it earned the gross receipts of Rs. 64.24 lakhs. During the year under consideration, the assessee had borrowed certain funds from banks on which interest amounting to Rs. 9.60 lakhs was paid to the bank. During the year under consideration, the assessee had also received dividend income of Rs. 4,26,898. The assessee claimed the aforesaid amount of dividend income as deduction under section 80M. However, the Assessing Officer rejected the claim of the assessee under section 80M on the ground that interest paid by the assessee was attributable to dividend income and therefore, the question of allowing any deduction did not arise. On appeal, the claim of the assessee was allowed by the Commissioner of Income-tax (Appeals)

by holding that the borrowings from banks was for the purpose of business i.e. for purchase and sale of shares and, therefore, the interest paid on such borrowings was allowable expenditure against the business income under section 36(1)(iii) and not against the dividend income under section 57(iii). It was further held by him that in view of the Supreme Court decisions in the case of CIT v. Indian Bank Ltd. [1965] 56 ITR 77 and in the case of CIT v. Maharashtra Sugar Mills Ltd. [1971] 82 ITR 452, the question of apportioning the interest between the business income and dividend income did not arise. Accordingly, the entire amount of Rs. 9,60,135 was allowed as deduction under section 80-M. Aggrieved by the same the revenue is in appeal before the Tribunal.

3. The learned Departmental Representative has assailed the order of the CIT(Appeals) by submitting that the decision of the CIT(A) is contrary to the judgment of the Hon'ble Supreme Court in the case of Distributors (Baroda) (P.) Ltd. v. Union of India [1985] 155 ITR 120/22 Taxman 49. According to him the expenditure on account of interest on borrowings has to be adjusted against the dividend income irrespective of the intention of the assessee. It was further submitted by him as an alternate contention that at least the interest paid by the assessee should be apportioned between the business income and the dividend income on pro-rata basis. In support of this submission, he relied on the decision of the Gujarat High Court in the case of H. K.(Investment) Co. (P.) Ltd. v. CIT [1995] 211 ITR 511.

4. On the other hand, the learned counsel for the assessee submitted before us that the issue is squarely covered by the decision of the Gujarat High Court in the case of CIT v. Cotton Fabrics Ltd. [1981] 131 ITR 99 and decisions of the Calcutta High Court in the case of CIT v. National & Grindlays Bank Ltd. [1993] 202 ITR 559 and in the case of CIT v. Enemour Investments Ltd. [1994] 72 Taxman 370. In addition to this, he also referred to the decision of the Bombay High Court in the case of CIT v. Mahendra Sobhagchand Shah [1993] 203 ITR 178/78 Taxman 287 and various other decisions of the Tribunal which are placed on the paper-book. According to him the assessee is a dealer in shares and therefore, any income arising out of such activity would amount to business income. Consequently, the expenditure of interest incurred on the borrowings from banks would be deductible

under section 36(1)(iii) and not under section 57(iii). Therefore, while computing the dividend income no deduction is to be allowed and in consequence thereof the entire amount of dividend is allowable as deduction under section 80M.5. Rival submissions of the parties have been considered carefully. The material to which our attention was drawn has also been considered carefully. There is no dispute about the fact that the assessee is a dealer in shares as is apparent from the purchase and sale on shares, the details of which have been given by us while stating the facts.

There is also no dispute about the fact that these shares were purchased as stock in trade and not as an investment. Further, there is no dispute about the fact that moneys borrowed by the assessee from the banks were utilised in purchase of such shares. In view of these admitted facts, the only inference that can be drawn is that monies borrowed by the assessee were utilised for the purpose of the business and therefore, the interest on such borrowings is deductible under section 36(1)(iii) while computing the business income.

6. It has to be brought in mind that there is a distinction between the monies borrowed for purchase of shares to be held as stock in trade and the monies borrowed for the purchase of shares to be held as investments. In the former case, the interest on borrowings has to be allowed as the business expenditure under section 36(1)(iii). While in the latter case, the interest is allowable as deduction under section 57(iii), while computing the income from dividend under the head "income from other sources". Therefore as a consequence thereof, the gross amount of dividend has to be allowed as deduction under section 80M in the former case, while in the latter case the deduction under section 80M has to be allowed on the net dividend income. In this connection, it is useful to refer two decisions of the Supreme Court.

The first decision is in the case of Western States Trading Co. (P.) Ltd. v. CIT [1971] 80 ITR 21 (SC), wherein it has been held as under : "If shares are held by an assessee as part of his trading assets, dividends on those shares would form part of the income from the business of the assessee." The second decision is in the case of CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC)

wherein it has been held as under : "Though for the purpose of computation of income interest on securities is separately classified, income by way of interest from securities, does not cease to be part of the income from business, if the securities are part of the trading assets. Whether a particular income is part of income of business falls to be decided not only on the basis of the provisions of section 6, but on commercial principles." In view of the above two decisions of the Supreme Court, it is crystal clear that the dividend income arising from the shares held as stock in trade, would amount to business income. Therefore, we are of the considered opinion that the interest paid by the assessee to the banks on the monies borrowed which were utilised for the purchase of shares to be held as stock in trade amounts to interest paid for the purpose of business of the assessee and, therefore, allowable as deduction under section 36(1)(iii).

7. The decision of the Hon'ble Supreme Court in the case of Distributors (Baroda) (P.) Ltd. (supra) relied upon by the learned Departmental Representative, in our opinion, does not support the case of the revenue on the facts of the case. According to this decision, the gross total income should include the income by way of dividend from domestic company and the income from dividend has to be computed in accordance with the provisions of the I.T. Act, before making any deduction under Chapter VIA. Therefore, if the assessee has incurred any expenditure by way of interest on the monies borrowed for earning of such income, then it has to be deducted from the gross dividend income and the deduction under section 80M has to be allowed on the net dividend income because what is included in the gross total income is the net dividend income. Therefore, this decision would be applicable only where the monies borrowed were utilised for purchase of shares to be held as investment for the purpose of earning the dividend income and not where the borrowed funds are utilised for the purpose of business, i.e., purchase of shares, to be held as stock in trade.

8. In the present case, the admitted facts as already discussed that borrowed funds were utilised for the purchase of shares as stock in trade. Therefore, the interest was deductible under section 36(1)(iii).

While computing the dividend income the interest payment could not be allowed as deduction under section 57(iii). Therefore, what is included in the gross total income is the gross amount of dividend and not the net dividend income. Therefore, in view of the Supreme Court decision relied upon by the learned D.R., the assessee is entitled to deduction under section 80M on the gross dividend income. The decision of the Gujarat High Court in the case of Cotton Fabrics Ltd. (supra) is squarely on the issue before us, wherein it has been held that the assessee is entitled to deduction under section 80M on the gross dividend income where the shares are purchased as stock in trade with the assistance of borrowed funds. To the similar effect is the decision of the Bombay High Court in the case of Mahendra Sobhagchand Shah (supra). Though this decision relates to deduction under section 80K, but the principle laid down by the Bombay High Court is the same as laid down by the Gujarat High Court in the aforesaid case. The other decisions of the Tribunal relied upon by the Id. assessee's counsel also support the case of the assessee.

9. The decision of the Gujarat High Court in the case of H.K.(Investment,) Co. (P.) Ltd. (supra) relied upon by the learned D.R. is distinguishable on the facts of the case. In that case, there was a finding that the borrowed funds were utilised partly for the purpose of business and partly for earning income assessable under the head "Income from other sources". Because of this finding, the Hon'ble High Court held that interest paid by the assessee on the borrowed funds should be apportioned between the business income and the income from other sources, on pro-rate basis. But in the present case, the finding of fact is that the borrowed funds were utilised for the purchase of stock in trade. Therefore, the question of apportionment of interest as canvassed by the learned D.R. does not arise. Even otherwise, once it is held that the borrowed funds were utilised for the purpose of business, there cannot be any apportionment of interest in view of the Supreme Court decisions relied upon by the CIT(A) in the case of Indian Bank Ltd. (supra) and in the case of Maharashtra Sugar Mills (supra).

10. In view of the above discussion, we decide the issue in favour of the assessee and against the revenue and uphold the order of the CIT(A). Consequently, the appeal of the revenue is dismissed.

