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Court : Kerala

Decided On : Mar-15-1977

Reported in : (1978)6CTR(Ker)0037B

Appeal No. : I.T.R. No. 46 of 1975

Appellant : A.

Respondent : Thomas and Co. V. Commissioner of Income Tax.

Judgement :

Gopalan Nambiyar, Ag. C.J. - The Income-tax Appellate Tribunal, Cochin Bench has sent up the statement of the case and formulated the following question of law for our opinion viz. :

'Whether, on the facts and in the circumstances of the case the Tribunal was right in law holding that only the net dividend of Rs. 67,282/- can be excluded and not the gross dividend of Rs. 1,71,204/- while computing the chargeable profits under the Companies (Profits) Surtax Act, 1964, for the assessment year 1971-72 ?'

2. The accounting year with which we are concerned is the year ending 31-12-1970. The assessee is a limited company. Apart from income from business it had also income from dividend. The amount of dividend received by it during the accounting year was Rs. 1,71,204.00. No deduction was either claimed or allowed from this amount by way of banking commission etc. as provided under S. 57 of the Income-tax Act. For the computation of the Income-tax assessment, dividend

income was taken into account without any deduction while computing the gross total income of the assessee as defined by S. 80B clause (5). The gross total income inclusive of the amount of dividend came to Rs. 8,38,166.00. The assessee also claimed deduction from this amount under S. 80L and 80M being dividend income from inter-corporate dividends. The claim was allowed to the extent of Rs. 3,000/- and Rs. 1,00,922/- respectively and the net income was arrived at for the purpose of Income-tax at Rs. 7,33,839.00. On this income, sur-tax payable had to be calculated under the provisions of the Companies (Profits) Surtax Act, 1964. The Income Tax Officer did this by computing the chargeable profits by a process of deduction from the total income as computed under the Income-tax Act, only a sum of Rs. 67,282.00 under Rule (1) (viii) of the First Schedule to the Surtax Act, and the figure of Rs. 67,282.00 represented the dividend income of Rs. 1,71,204.00 less the relief under S. 80L of and S. 80M. The assessee contended that the deduction under this rule would be the entire dividend of Rs. 1,71,204.00 and not merely that portion of it, reduced by the reliefs granted under the above sections. The claim was rejected. The Income-tax Officers order was confirmed by the Appellate Assistant Commissioner. On further appeal, the Tribunal reversed these orders and accepted the assessee's claim. It sent up the aforementioned question of law for our decision.

The Companies (Profits) Surtax Act 1964 by S. 2 clause (5) defines chargeable profits as follows :

'(5) 'chargeable profits' means the total income of an assessee computed under the income-tax Act, 1961 for any previous year or years as the case may be, and adjusted in accordance with the provisions of the First Schedule.'

By Clause (9) there is an omnibus provision as follows :

'2(9) all other words and expressions used herein but not defined and defined in the Income-tax Act shall have meanings respectively assigned to them in the Act.'

The charging section is S. 4 which provides :

'4. Charge of tax-Subject to the provisions contained in this Act, there shall be charged on every company for every assessment year commencing on and from the first day of April, 1964, a tax (in this Act referred to as the surtax) in respect of so much of its chargeable profits of the previous or previous years, as the case may be as exceed the statutory deduction, at the rate or rates specified in the Third Schedule.'

Turning now to the First Schedule, it provides in so far as it is relevant to notice as follows :

'In computing the chargeable profits of a previous year, the total income computed for that year under the Income-tax Act shall be adjusted as follows :-

(1) Income, profits and gains and other sums falling within the following clauses shall be excluded from such total income, namely :-

(i) to (vii) xx xx xx

(viii) income by way of dividends from an Indian Company or a company which has made the prescribed arrangements for the declaration and payments of dividends within India :'

The rest of the schedule is not very material and is therefore left out. It will be seen that the charging Section S. 4 lays the surtax on the chargeable profits of the previous year i.e., such portion of it, as exceeds the statutory deduction. The definition of chargeable profits is geared to concept of total income under the Income-tax Act 1961; and the integral connection with the Income-tax Act is further emphasised by clause (9) of S. 2 of the Act. Turning now to the Income-tax Act, 1961, S. 2 clause (45) defines total income. S. 10 provides for incomes which do not form part of the total income. S. 14 provides for the various heads are referred to in the Section. The sections that follow are related to and treat of, these heads of income. Among the last of these heads viz. income from other sources one of the sources is income from dividend. This is treated in S. 56 and 57. S. 56 dealing with the various other sources of income, and listing dividends at one such sources, and S. 57 providing for deduction in respect of income from dividends

among others. We then have S. 80 which provides for deduction in respect of certain intercorporate dividends and which reads as follows :

80-M Deduction in respect of certain intercorporate dividends.

(1) Where the gross total income of an assessee being a company includes any income by way of dividends from a domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends of an amount equal to -

(a) where the assessee is a domestic company -

(i)

in respect of such income by way of dividends from a company formed and registered under the Companies Act, 1956 after the 28th day of February 1975 and engaged exclusively in the manufacture or production of any one or more of the articles or things specified in items 11 and 18, item 23 (exceeding refractories) and item 24 in the list in the Ninth Schedule -

The whole of such income

(ii)

in respect of such income by way of dividends other than the dividends referred to in sub-clause (i).

Sixty per cent of such income

(b)

where the assessee is a foreign company, in respect of such by way of dividends.
income

Sixty five per cent of such income

(2)

Where a company to which this section applies is entitled also to the deduction under S. 80K, the deduction under sub-S. (1) shall be allowed in respect of income by way of dividends referred to therein as reduced by the amount of deduction under S. 80K.

In the light of these provisions, the question raised is whether the deduction to be given under Rule 1 (viii) of the First Schedule of the Companies (Profits) Surtax Act or the exclusion to be made, would be in respect of the entirety of the dividends received by the Company or only in respect of that portion of the dividend arrived at after applying S. 57 and 80M of the Income-tax Act.

5. Giving the matter our careful attention, we are of the opinion that the assessee is entitled under the provisions of Rule 1 (viii) of the First Schedule of the Companies (Profits) Surtax Act, to an adjustment of the entirety of the dividends, unaffected by the provisions of S. 57 and of S. 80M of the Income-tax Act. It is true that the provisions of the Income-tax Act in regard to the determination or computation of the total income from an integrated Scheme, which must be linked, as far as dividend income is concerned, to the provisions that we have noticed above, viz. S. 10 S. 14, and Ss. 56, 57 and 80L. & M. But after the application of the provisions of these sections when the total income for the purpose of the Income-tax Act and the chargeable profits for the purpose of the Surtax Act are ascertained, the latter Act ordains and provides for an adjustment in the mode and manner indicated by the First Schedule. Turning to clause (viii) thereof, we see no warrant to detract from the generality of the words 'income by way of dividends' and to continue these words only to such income as had been reduced by applying the provisions of S. 57 or S. 80M or any other provisions of the Income-tax Act. This conclusion strikes us on a reading and understanding of the provisions of the Act, and we do not think that the said conclusion should in any be affected or blurred by the citation of the authorities to which we may briefly now turn.

6. Our attention was first drawn to an unreported judgment of our learned brothers Poti & Bhaskaran JJ. in I.T.R. No. 17 of 1972. The question referred for determination was :

'Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee company is eligible for deduction only of Rs. 15,885, that being 60 per cent of the net dividend of Rs. 26,475/-under s. 80M of the Income-tax Act, 1961 and not to a deduction of 60 per cent of Rs. 65,507 under the aforesaid section ?'

The learned Judge referred to S. 80M as it stood during the relevant year which was 1969-70. The expression before the learned Judges was about the scope of the portion 'such income' occurring in S. 80M and whether this signifies the gross receipt of dividends or the income as determined under S. 57 of the Act. The learned Judges referred to the definition of gross total income under s. 80B(5) of the Income tax Act and to the deductions from dividends income provided for in S. 57 of the Act. In the light of these provisions, the learned Judges were of the view that 'such income', could only refer to the income from dividends after applying the provisions of S. 57. With respect, we do not think the principle of the decision has got application to the case before us. The decision of the Madras High Court in C.I.T. Madras-II vs. Madras Motor & General Insurance Co. Ltd. was cited to us. The question there debated was one of rebate under S. 99(1)(iv) of the Income-tax Act, 1961. It was ruled that said rebate is available also on the gross dividend. This was rested on the words 'received by it' having been deleted by S. 31(3) of the Finance Act, 1968 with effect from the 1st April, 1962. The question was further considered whether the assessee was not liable for surtax under Rule (1) (viii) of the First Schedule in Companies (Profits) Surtax Act, 1964. This was dealt with briefly as follows :

'The assessee is also not liable for surtax on this dividend income under rule 1 (viii) of the First Schedule to the Companies (Profits) Surtax Act, 1964. This rule has employed a similar language as contained in S. 99(1)(iv) as amended by the Finance Act and for the reasons stated above the dividend income is also exempt from surtax. Accordingly, in respect of the assessment year 1964-65, we answer both the questions relating to super-tax and surtax in favour of the assessee.'

It will be noticed that the question considered again turned almost entirely on the provisions of Section 99(1)(iv) of the Income-tax Act 1961. That Section was as

follows :

'Super-tax shall not be payable by the assessee in respect of the following amounts which are included in his total income (iv) if the assessee is a company, any dividend received by it from an Indian Company subject to the provisions contained in the Fifth Schedule.'

The Finance Act of 1964 amended this provisions by substituting the following clause (iv) :

'If the assessee is a company, any dividend received by it from an Indian Company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India'.

We re-produce the Section only to emphasise the language of the Section on which the decision rested, we will also point out that there was no reference in the decision to Section 80-M of the Income-tax Act Commissioner of Income-tax vs. New Great Insurance Co. & Another, a decision of the Bombay High Court was the decision next cited. The assessment year was 1963-64. The decision turned of Section 85-A and Section 99 (1) (iv) of the Income-tax Act 1961. The statutory provisions with which we are here concerned did not come up for examination.

7. For the said reason, we do not think that the decision of the Calcutta High Court also cited to us in Commissioner of Income-tax, West-Bengal III vs. Darbhanga Marketing Co. Ltd., is of much assistance. The assessment year was 1962-63 and the provision considered was Section 99(1)(iv) of the Income-tax Act. The assessee placed reliance on the following exposition in regard to the words 'which are included in his total income', occurring in Section 99(1)(iv).

'The expressions 'which are included in his total income' in sub-section (1) of section 99 and 'incomes forming part of total income' in the heading are descriptive of the items included in the computation of the total income and not indicative of the items included in the computation of the total income and not indicative of the quantum of the amounts included under the different items in the

computation of total income. Such a construction of these expressions would be in harmony with obvious meaning of the expression 'dividend received'. Any other construction would result in an anomaly.'

8. The decision in *Madras Auto Services vs. The Income-tax Officer, Company Circle, II (i) Madras*, again turned on the provisions of Section 80K and Section 80M of the Income-tax Act 1961, read with Section 99(1)(iv) of the said Act. It was ruled that relief under Section 99(1)(iv) would be available on the gross dividend income and not on the net dividend income. We have referred to the above decisions in deference to Counsel who have placed the relevant authorities before us. We may also point out that Counsel for the Revenue invited out attention to the relevant amendments effected by the Finance Act, 1965 which introduced Chapter VI-A in the Income-tax Act 1965, for the purpose of showing that the object of the amendment was to provide an integrated scheme for determining the total income. As stated earlier, in view of the provisions of the Companies (Profits) Surtax Act, even after the integrated provisions of the Income-tax Act, we are of opinion that the question of law referred must be answered in the negative i.e., in favour of the Assessee against the Department. We do so. In the circumstances of the case we make no order as to costs.

A copy of this judgment, under the signature of the Registrar and the seal of the Court, will be communicated to the Appellate Tribunal, as required by law.

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