

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

ITC No.41 of 1999

Date of Decision: 18.03.2013

The Commissioner of Income Tax, Patiala ...Petitioner

Versus

Consumer Health Care Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Urvashi Dugga, Advocate, for the petitioner.

Ms. Radhika Suri, Advocate, for the respondent.

HEMANT GUPTA, J. (ORAL)

The Revenue has invoked the jurisdiction of this Court under Section 256(2) of the Income Tax Act, 1961 (for short 'the Act') raising following substantial questions of law arising out of an order dated 31.03.1998 passed by the Income Tax Appellate Tribunal (for short "the Tribunal") in respect of assessment year 1991-92:

"Whether on the facts and in the circumstances of the case, the ITAT was right in law in directing that deduction under Section 80M be worked out after reducing the interest amounting to Rs.74,85,770/- from the gross dividend income when the whole of the interest amounting to RS.3.56 crores has been incurred by the assessee for the purpose of earning dividend and was liable to be deducted u/s 57 (iii) while computing the dividend income for the purpose of deduction u/s 80M of the Income Tax Act, 1961?"

During the relevant assessment year, the assessee made investments in Unit Trust of India giving rise to the dividend income. The

assessee claimed deduction of such dividend income in terms of Section 80M read with Section 80AA of the Act. The Tribunal held that the assessee is entitled to deduction of dividend income after adjusting of interest on loan raised for earning of the said dividend income rather than the entire interest paid during the year in question.

In the first two months during the relevant assessment year i.e. April & May, 1990, the assessee purchased units worth Rs.40.74 crores i.e. purchases amounting to Rs.3.66 crores were made on 05.04.1990, 09.04.1990 and 30.04.1990; purchases amounting to Rs.7.11 crores were made on 02.05.1990, 20.05.1990 & 21.05.1990; and further purchases amounting to Rs.24.60 crores and Rs.5.36 crores were made on 30.05.1990 and 31.05.1990. It is also a fact that the assessee sold units worth Rs.7.11 crores in April, 1990 and the units of the equivalent amount were purchased as mentioned above. The assessee has raised loans worth Rs.28.39 crores in May 1990. The assessee paid interest of Rs.3.56 crores in respect of borrowings for different purposes during the relevant year.

Learned Commissioner of Income Tax (Appeals) in its order under Section 263 of the Act observed that there is no merit in the argument of the assessee that interest expenditure up to the date of investment in units is not to be considered alone, but the interest expenditure for whole of the year has to be taken into account for arriving at the correct net dividend income. It is the said finding, which has been set aside by the Tribunal holding that the interest paid on the amount of investments leading to dividend income alone is required to be adjusted in terms of Section 57(iii) of the Act.

Before this Court, learned counsel for the petitioner has argued that the assessee was maintaining Master Account i.e. all the receipts and

the payments are accounted at once place, therefore, the entire interest paid during the relevant assessment year is liable to be deducted for determining the dividend income in terms of Section 36(1)(iii) of the Act. Reliance is placed upon the judgment of Hon'ble Supreme Court as well as of this Court reported as Distributors (Baroda) P.Ltd. Vs. Union of India & others (1985) 155 ITR 120 and Commissioner of Income Tax Vs. Abhishek Industries Ltd. (2006) 286 ITR 1 respectively.

On the other hand, Ms. Suri contended that Section 36 deals with permissible deductions in respect of profits from business or profession, whereas Section 57 deals with 'income from other sources'. Since the income from dividend is income from other sources, therefore, the relevant provision is Section 57 of the Act and such provision contemplates that any expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income alone is liable to be deducted for determining the income from other sources.

We have heard learned counsel for the parties and find no error in the order passed by the Tribunal. Though the assessee was maintaining Master Account, but the fact remains that the Tribunal has been able to find out as a fact that the loan from three Banks i.e. Bank of America, American Express Bank and Grindlays Bank, is related to purchases of the units by the assessee and interest paid for availing such loan alone is liable to be deducted for arriving at the net dividend income. Such calculation was accepted by the departmental representatives before the Tribunal.

The finding of the Tribunal that the amount of interest as is relatable to the dividend income alone is liable to be deducted from determining the dividend income is in accordance with the judgment of the Constitutional Bench in Distributors (Baroda) P.Ltd. case (supra). It has

been held that the dividend income is to be arrived at after adjusting the interest on loan availed for making investment, giving rise to dividend income and not the interest paid by the assessee on other borrowings during the relevant assessment year.

Consequently, we do not find that any substantial question of law arises for consideration by this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

18.03.2013
Vimal

(RITU BAHRI)
JUDGE