

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 281 of 2004

Date of Decision: 7.10.2010

M/s Nahar Spinning Mills Ltd.

....Appellant.

Versus

The Commissioner of Income Tax (Central), Ludhiana

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Sanjay Bansal, Senior Advocate with
Ms. Suveta Malhotra, Advocate for the appellant.

Mr. Rajesh Katoch, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of ITA Nos. 281 of 2004, 500 and 501 of 2005 as common question of law and facts are involved therein. For brevity, the facts are being taken from ITA No. 281 of 2004.
2. This Court vide order dated 4.7.2006 had admitted the appeal for consideration of the following substantial question of law:-

“Whether on the facts and circumstances of the case, the Tribunal was right in law in not allowing deduction u/s 80-M of the Act to the assessee company in respect of income distributed by PNB Mutual Fund which partakes the same character as was in their hand and exempt u/s 80-M of the Act?”

3. Facts necessary for disposal of the appeal relating to claim

of deduction under Section 80M of the Income Tax Act, 1961 (in short "the Act") only may be noticed. The assessee is engaged in the manufacture and export of Textile & Hosiery garments. It claimed deduction under Section 80M of the Act. During the course of assessment proceedings for the assessment year 1992-93, the Assessing Officer found that the assessee had claimed deduction under Section 80M amounting to Rs.8,00,000/- The Assessing Officer disallowed aforesaid amount under Section 80M. On appeal, the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"] confirmed the action of the Assessing Officer. On further appeal by the assessee, the Tribunal rejected the plea and held that the assessee was not entitled to any relief under Section 80M of the Act with regard to deduction of Rs.8 lacs. Hence, the present appeal by the assessee.

4. We have heard learned counsel for the parties and perused the record.

5. The point that arises for determination in this case is whether the assessee who had received income which was distributed by PNB Mutual Fund was allowable as deduction under Section 80M of the Act.

6. Learned counsel for the assessee submitted that the income which was distributed by another company, namely, PNB Mutual Fund was in the nature of dividend received by the assessee-company and, therefore, in view of Section 80M, the assessee was entitled to deduction. He has placed reliance upon the judgment of this Court in **Commissioner of Income-tax v. Puja Investments (P) Ltd., [2005] 272 ITR 606 (P&H)** in support of his submission.

7. On the other hand, controverting the aforesaid submission, learned counsel for the revenue argued that the authorities below have concurrently recorded that it was an income and not a dividend which was distributed by the PNB Mutual Fund and that the Mutual Fund was not a company. It was urged that once it was so, the assessee was not entitled to any deduction under Section 80M of the Act. Learned counsel supported the orders passed by the authorities below.

8. We have given our thoughtful consideration to the respective submissions of the learned counsel for the parties and are not impressed with the submission made by the learned counsel for the assessee. It would be relevant to reproduce Section 80M as it existed before it was omitted by Finance Act, 2003 w.e.f. 1.4.2003 and the same reads thus:-

“80M. Deduction in respect of certain inter-corporate dividends.- (1) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date.”

9. A bare reading of the aforesaid provision clearly spells out that where the gross total income of an assessee which is a domestic company in any previous year includes any income by way of dividends from another domestic company, the assessee shall be entitled to deduction of such dividend from its income as does not exceed the amount of dividend distributed by such domestic company. Thus, the assessee is entitled to deduction when it receives dividend income from another domestic company.

10. Now adverting to the present case, the Assessing Officer rejected the ground of the assessee in respect of deduction under Section 80M of the Act, with the following observations:-

“The assessee has claimed deduction u/s 80M amounting to Rs.9,83,120/-. On scrutinizing the details with respect to the claim of this deduction it is seen that Rs.8,00,000/- PNB Mutual Funds is not a domestic company. It is simply a Mutual Fund whose trustee is the PNB Capital Services Ltd. Thus any receipts of dividend received from such entity which is not company itself does not make such receipts, eligible for deduction u/s 80M as under the provisions of this section, the dividend must flow from one domestic company to another domestic company. In view of the fact that the dividend received from PNB Mutual Funds is not inter-corporate dividend, deduction to the extent of 8,00,000/- is not allowed, as claimed by the assessee.”

11. The said finding was upheld by the CIT (A) and affirmed by the Tribunal. The findings of the Tribunal recorded in paras 13 and 14 read thus:-

“13. Ground No.4 is relating to deduction u/s 80M on dividend of Rs.8 Lacs received from PNB mutual fund. The Ld. counsel for the assessee contended that income derived from Mutual Fund was nothing but distribution of dividend to members of the Mutual Fund. On the ground of mutuality, the income derived by the mutual fund and distributed amongst the members partakes the same character as in the case of mutual fund. It was accordingly pleaded that deduction u/s 80-M may be allowed on the dividend received from the said fund. The Ld. D.R. on the other hand, contended that there is no ambiguity in the language of section 80-M. Deduction is permissible in respect of the dividend received from a domestic company. Mutual fund is not a domestic company and, therefore, no deduction is permissible to the assessee u/s 80-M.

14. We have given our careful consideration to the rival contentions. In our considered view the language of Section 80M is unambiguous and no deduction is permissible u/s 80M in respect of dividend received from the mutual fund. It may be pertinent to mention that the income from mutual

fund is now specifically exempt u/s 10(33). However, the said amendment is not applicable in the year under appeal. The assessee is thus not entitled to any relief u/s 80-M in regard to dividend of Rs.8 Lac.

This ground of appeal is thus dismissed.”

12. Nothing was shown by the learned counsel for the assessee that the said finding was perverse in any manner.

13. The judgment relied upon by the assessee in **Puja Investments (P) Ltd's case (supra)** does not apply to the facts of the present case. In that case, the trust had received certain dividends from an Indian Company which was paid to the assessee-company. It was held that in view of Section 67A of the Act, the dividend income which was received by the trust and distributed to the assessee-company therein retained the character of dividend and was entitled to deduction under Section 80M of the Act. In the present case, neither the income received from PNB Mutual Fund can be termed as dividend income nor can the said fund be categorized as the domestic company within the meaning of Section 80M of the Act.

14. In view of the above, the question of law, reproduced above, is answered against the assessee and in favour of the revenue.

15. Consequently, the appeals are dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 7, 2010
gbs

(ADARSH KUMAR GOEL)
JUDGE

ITA No. 281 of 2004

-7-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 501 of 2005

Date of Decision: 7.10.2010

M/s Nahar Spinning Mills Ltd.

....Appellant.

Versus

The Commissioner of Income Tax (Central), Ludhiana

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Sanjay Bansal, Senior Advocate with
Ms. Suveta Malhotra, Advocate for the appellant.

Mr. Rajesh Katoch, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

This appeal is dismissed.

For orders, see **ITA No. 281 of 2004 (M/s Nahar Spinning
Mills Ltd. v. The Commissioner of Income Tax (Central), Ludhiana).**

**(AJAY KUMAR MITTAL)
JUDGE**

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**(ADARSH KUMAR GOEL)
JUDGE**

ITA No. 281 of 2004

-8-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 500 of 2005

Date of Decision: 7.10.2010

M/s Nahar Spinning Mills Ltd.

....Appellant.

Versus

The Commissioner of Income Tax (Central), Ludhiana

...Respondent.

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Ms. Suveta Malhotra, Advocate for the appellant.

Mr. Rajesh Katoch, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

This appeal is dismissed.

For orders, see **ITA No. 281 of 2004 (M/s Nahar Spinning
Mills Ltd. v. The Commissioner of Income Tax (Central), Ludhiana).**

**(AJAY KUMAR MITTAL)
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