
Commissioner of Income Tax Vs Diners Club India Ltd.

Income-tax Appeal No. 140 of 2000

Court: Bombay High Court

Date of Decision: June 19, 2000

Acts Referred:

Income Tax Act, 1961 & Section 260A, 32AB, 37(2B)#Income Tax Rules, 1962 & Rule 5AB

Citation: (2001) 248 ITR 679 : (2001) 118 TAXMAN 161

Hon'ble Judges: S.H. Kapadia, J; R.M.S. Khandeparkar, J

Bench: Division Bench

Advocate: R.V. Desai and J.P. Deodhar, for the Appellant; P.J. Pardiwall, instructed by Kanga and Co., for the Respondent

Judgement

1. The short point which arises for consideration in this appeal filed by the Department is : whether the Tribunal was justified in holding that income

from dividends, profits on sale of investments and interest on deposits constituted profits from eligible business within the meaning of Section 32AB

of the Income Tax Act, 1961.

2. The facts giving rise to this appeal, briefly, are as follows :

The assessee is a club. The assessee claimed investment deposit account allowance as per the report submitted under Rule 5AB. The assessee

contended before the Assessing Officer that income from dividends and profits on sale of investments during the relevant assessment year

constituted profits from eligible business computed in accordance with Part II and Part III of Schedule VI to the Companies Act. This contention

of the assessee was not accepted by the Assessing Officer in view of the clarification issued by the Institute of Chartered Accountants. Ultimately,

the matter came before the Tribunal. The Tribunal found, on the facts, that as per the accounts of the assessee, the profits of business computed

under the Companies Act took into account the dividend income and since the dividend income was a part of the business income of the assessee,

the assessee was entitled to include such income into profits from eligible business. Being aggrieved, the Department has come in appeal.

3. Learned counsel appearing for the Department relied upon the order passed by the Assessing Officer in which a specific reference is made to

the clarification issued by the Institute of Chartered Accountants. We have gone through the said clarification. The said clarification needs to be

read in the light of the facts of each case. In this appeal, the only point raised by the Department is that, on the facts, the said items do not

constitute profits from eligible business. The Tribunal has gone through the accounts. The Tribunal has recorded a finding of fact that the accounts

of the assessee show that the dividend income constituted business income of the assessee. In the circumstances, no substantial question of law

arises in this appeal.

4. Mr. Desai, however, contended that in view of the provisions of Section 37(2B) as it stood at the relevant time, the assessee was not entitled to

claim deduction u/s 32AB as the assessee was only a club and it was not entitled to claim the deduction under the said section. We are afraid, this

point has not been raised in the memo of appeal. Hence, we do not permit the Department to raise the above contention.

5. Accordingly, the appeal is dismissed. No order as to costs.

6. C. C. expedited.