

(1993) 07 CAL CK 0010

Calcutta High Court

Case No: IT Reference No. 217 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Enemour Investments Ltd.

RESPONDENT

Date of Decision: July 2, 1993**Acts Referred:**

- Income Tax Act, 1961 - Section 14, 256(2), 56, 57, 57(1)

Citation: (1994) 72 TAXMAN 370**Hon'ble Judges:** Shyamal Kumar Sen, J; Ajit K. Sengupta, J**Bench:** Division Bench

Judgement

Shyamal Kumar Sen, J.

Pursuant to the direction u/s 256(2) of the income tax Act, 1961 ("the Act") the following questions were referred by the Tribunal:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in upholding the order of the Commissioner of income tax (Appeals) that though the income from dividends has to be assessed under a separate head, expenses incurred for the purpose of earning income from investments in shares should be allowed against income from dividend from such shares?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in upholding the order of the Commissioner of income tax (Appeals) that deduction u/s 80M the IT. Act, 1961, should be allowed on the gross amount of dividend received by the assessee and not on the net amount of dividend computed after deducting the apportioned expenditure?
3. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in upholding the order of the Commissioner of income tax (Appeals) directing the Assessing Officer to carry forward the unallowed deduction u/s 80M of the income tax Act, 1961, to the next assessment year in view of the provisions of

section 80A(2), read with section 80B(5) of the income tax Act, 1961?

The facts, inter alia, as appear from the statement of case are that the assessee-company was engaged in the business of dealing in shares and securities, etc., and claimed deduction u/s 80M of the Act on the gross dividend of Rs. 2,51,550 and Rs. 3,10,700 on the shares held by it respectively for the assessment years 1985-86 and 1986-87. In the course of assessment the ITO held that the part of the expenditure made by the assessee-company was attributable to earning of the dividend income and in the absence of any apportionment in the books of account the estimate of such expenditure at 5 per cent of the gross dividend of the two years was proper. He accordingly deducted a sum of Rs. 2,51,550 and Rs. 3,10,700 for the two assessment years respectively from the gross dividends and allowed the relief u/s 80M on the net dividend.

2. Being aggrieved, the assessee-company came up in appeal before the Commissioner (Appeals). The assessee-company challenged the ITO's action and argued that the dividend income, though assessable under the head "Income from other sources" arises out of its business actively and no apportionment of the expenses between the business income and income from other sources should be made. Two decisions of this Court were cited and relied upon on behalf of the assessee-company before the Commissioner (Appeals). It was urged that introduction of section 80AA of the Act has not altered the position of law vis-a-vis the computation of deduction u/s 80M in the case of a dealer in shares. The Commissioner (Appeals) held that the assessee-company was doing business of dealing in shares and that the dividend income accruing in the course of such dealings should in its entirety be taken as relating to the business and no deduction u/s 57(iii) of the Act should be made in such cases. Thus, the Commissioner by holding such a view directed the Assessing Officer to recompute the unabsorbed deduction u/s 80M to be carried forward for each of the two years, in accordance with law.

3. The revenue was not satisfied with the said direction of the Commissioner (Appeals) and, hence, came up to the Tribunal. The Tribunal held that the view taken by the Commissioner (Appeals) appeared to be correct and no interference was called for. Thus, the Tribunal dismissed the revenue's appeals.

4. The instant reference has been made at the instance of the revenue against the said decision of the Tribunal.

5. Mr. A.C. Maitra, the learned Advocate for the revenue, referred to section 14 of the Act which provides that:

14. Heads of income. -Save as otherwise provided by this Act, all income shall, for the purpose of charge of income tax and computation of total income, be classified under the following heads of income-

- A. Salaries.
- B. Interest on securities.
- C. Income from house property.
- D. Profits & gains of business or profession.
- E. Capital gains.
- F. Income from other sources.

6. He has also referred to the judgment and decision in the case of United Commercial Bank Ltd v. CIT [1957] 32 ITR 688 (SC). He has further submitted that in the aforesaid decision it has been held that specific heads of section are mutually exclusive and when one item of income falls under one head it is to be charged under that head and no other. United Commercial Bank is a banking company. Referring to the said decision, Mr. Maitra submitted that though the whole activity is that of business income which is chargeable specifically under a distinct head cannot be brought to charge under a different head. In the aforesaid decision it has been held that interest on securities is a specific head of charge and thus it cannot be brought to tax as profit of business even if securities are treated as trading assets.

7. It has been contended by the learned Advocate for the revenue that irrespective of the finding of the Tribunal that the income of this investment company arises from trading activity, by virtue of principles laid down by the Supreme Court in case of United Commercial Bank Ltd (supra) the income from dividend has to be assessed u/s 56 and as soon as it can be held that income from dividend is u/s 56 of the Act, the principles of section 57 shall apply, section 57(1) states in the case of dividends, a reasonable sum for the purpose of realising dividend on behalf of the assessee is to be allowed as a deduction. In the absence of details, 5 per cent of gross dividend has been deducted as expenses relating to earning of dividend. It has not been disputed by the assessee that deduction of 5 per cent of gross dividend relating to earning of dividend is unjust.

The learned Advocate also relied upon the decision in the case of CIT v. Chugandas & Co. [1965] 55 ITR 17 (SC) and wherein it was held that

... the heads do not exhaustively delimit sources from which income arises. This is made clear in the judgment of this Court in the United Commercial Bank Ltd."s case [1957] 32 ITR 688 (SC) that business income is broken up under different heads only for the purpose of computation of the total income; by that break-up the income does not cease to be the income of the business, the different heads of income being only the classification prescribed by the Indian income tax Act for computation of income.... (p. 24)

8. The learned Advocate for the revenue submitted that it may be for the purposes of setting off loss, dividend income is to be treated as business income. But that does not lead to the conclusion that dividend income is not to be assessed u/s 56 and deductions are not to be allowed for the purpose of earning dividend. In this connection, he has also relied upon the decision in the case of CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC). In view of that position, gross dividend should not be taken into account part of expenditure could be allowed under the head "Income from other sources", i.e., dividend income in terms of section 57. He had also referred to the decision in the case of CIT v. New India Investment Corpn. Ltd. [1978] 113 ITR 778 (Cal.). There it was held that where the shares and securities are held as stock-in-trade and not by way of investment only there is no scope of apportionment of the expenditure between the dividend income and business income.

9. He has also relied upon the decision in the case of Distributors Baroda (P.) Ltd. v. Union of India [1985] 155 ITR 120 (SC) as well as the provisions of section 80A(2), read with section 80B(5), of the Act. Our attention was also drawn to the decisions in CIT v. National Insurance Co. Ltd, [1986] 159 ITR 314 (Cal.) and [Commissioner of Income Tax Vs. Supreme Credit Corporation \(P.\) Ltd.,](#) . But the view taken by this Court, inter alia, in New India Investment Corpn. Ltd."s case (supra) is not in conflict with the decision of the Supreme Court in Distributors Baroda (P.) Ltd."s case (supra) or the provisions of section 80A(2) read with section 80B(5) because in the type of cases like the one before us the dividend income as such cannot have any outgoing so the question of reducing the gross dividend to net dividend does not at all arise. Therefore, there is no reason to interfere with the decision of the Tribunal which in our view was correct in upholding the order of the Commissioner (Appeals).

10. Accordingly, all the questions are answered in the affirmative and in favour of the assessee and against the revenue.

11. There will be no order as to costs.

Sengupta, J.

12. I have gone through the judgment of my learned brother Shyamal Kumar Sen, J. I fully agree with the reasoning and the ultimate conclusion. It is, however, necessary to draw out the controversy into focus which the learned counsel for the revenue sought to urge before us. The learned counsel strenuously argued that the Supreme Court in United Commercial Bank Ltd's case (supra) has held that where the business is that of investment or includes investment or dealings in shares and securities, the yield of such business though essentially business income is yet classified and computable as dividend or otherwise, there is no error on the part of the Assessing Officer to apportion the expenditure, in spite of its being business expenditure as a whole, among the different classifiable heads of the said business income. Where part of business income is computed as dividend income, part of

business expenditure has as well to be correlated with such dividend income. This apportionment is necessary for the limited purpose of computing allowable deduction u/s 80M.

The approach of the learned counsel for the revenue boils down to a simple proposition that if business income is artificially classified in any part as dividend, business expenditure should also be so classified for the sake of evenness of treatment. But if there is nothing in law that authorises the Court to create an additional fiction for the sake of adjustment of the lopsidedness of the fiction, that is, legislative function outside our domain. Therefore, we are not persuaded to depart from the consistent view taken by this Court with which we are in agreement.