

(2002) 07 DEL CK 0119

Delhi High Court

Case No: IT Ref. No. 121 of 1978 11 July 2002 A.Y. 1966-67

Goodyear Tyre and Rubber Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** July 11, 2002**Citation:** (2002) 176 CTR 440 : (2002) 124 TAXMAN 461**Hon'ble Judges:** Sharda Aggarwal, J; Ms. Sharda Aggarwal, J; D.K. Jain, J**Bench:** Full Bench**Advocate:** Santosh K. Aggarwal with Vinay Vaish, for the assessed Sanjiv Khanna with Ms. Rashmi Chopra, for the Revenue, for the Appellant;

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### Judgement

D.K. Jain, J.

At the instance of the assessed, the Income Tax Appellate Tribunal Delhi, Bench "B" (hereinafter referred to as "the Tribunal"), has referred u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the following question, arising out of ITA No. 1988 (Del) of 1975-76, pertaining to the assessment year 1966-67, for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the Income Tax Officer's order u/s 154, dated 31-1-1974, raising an additional demand of Rs. 1,82,571 was valid in law ?"

2. Briefly stated, the material facts are :

During the previous year relevant to the assessment year 1966-67, besides other income, the assessed derived income from dividends and royalty also. In the original assessment for the relevant assessment year, completed on 29-8-1970, the effective rate at which tax was levied on income from dividends and royalty was calculated as follows :

	Rs.
"Royalty Income Rs. 14,66,284 Tax @ 50%	7,33,142.00
Dividend income Rs. 24,02,250	
Tax rate .....70%	
Deduct under the	
then section 85A ..... 45%	
Effective tax rate ..... 25%	
Tax @ 25%	6,00,562.25
Total tax payable	13,33,704.25

However, on 12-2-1973, the assessing officer issued a notice to the assessed u/s 154 of the Act, desiring to rectify the mistake which had crept in the order dated 29-8-1970, while calculating the deduction u/s 85A of the Act. As expected, the assessed resisted the move by the assessing officer to rectify the said order. However, (rejecting) the contention of the assessed that the mistake sought to be rectified was not a mistake apparent from the record, the assessing officer worked out the deduction u/s 85A as under :

	Rs.
"Tax on income from royalty of Rs. 14,66,284 @ 50% (as earlier)	7,33,142
Tax on income from dividends of Rs. 24,02,250 @ 70%	16,81,575
Total	24,14,717

Average rate of tax : =

24,14,717

(14,66,284 + x 100  
24,02,250)

=  $\frac{24,14,717}{38,68,534} \times \frac{100}{62.4\%}$

Deduction u/s 85A (62.4% minus 37.4%  
25% Income Tax on dividends from)

Thus, the Income Tax Officer reduced the  
deduction from 45% (70% minus 25%) to  
37.4% (62.4% minus 25%)

Deduction on dividends Rs. 24,02,250 @ 8,98,441.50  
37.4%

Net tax payable 15,16,275.50

Less Tax charged as per order of 13,33,704.50  
:  
assessment dt. 29-8-1970  
(as per para 3 above)

Balance tax payable 1,82,571.00"

3. Being aggrieved, the assessed took the matter in appeal to the Appellate Assistant Commissioner but without success. A further appeal was preferred to the Tribunal. The Tribunal confirmed the action of the assessing officer by observing thus :

"On a consideration of the submissions before us and the material on records, we see no reason to interfere. We must indeed record here that we were at first inclined to the opinion that this was a case where, conceivably, two views could exist. But the

decision of the Calcutta High Court (noted supra) does not support the position taken by Shri Gupta. It was suggested for the assessed that decisions of the Calcutta High Court were not binding on us. It is true that the Tribunal, sitting in, Delhi, is not bound by decisions of the Calcutta High Court. At the same time, rulings of High Courts, wherever situated, carry a persuasive value for the Tribunal. We do not think it consistent with judicial propriety to take a view different from that expressed by a High Court, especially, in the absence of any contrary view expressed by any other High Court.

We are in respectful agreement with the above reading of section 85A. We, Therefore, hold that the impugned order of the Income Tax Officer reveals no infirmity and that the Appellate Assistant Commissioner was correct in confirming the said order."

On assessed's moving an application u/s 256(1) of the Act, the aforementioned question has been referred.

4. We have heard learned counsel for the parties.

An identical issue came up for consideration before the Calcutta High Court in [Income Tax Officer, "E" Ward and Others Vs. Raleigh Investment Co. Ltd.](#), wherein the court held that a similar mistake could be rectified u/s 154 of the Act. In [Birla Bombay P. Ltd. Vs. Commissioner of Income Tax, Bombay City I](#), while dealing with the question of deduction of tax on inter-corporate dividends under the provisions of section 85A of the Act, it was observed as follows :

"..... The question then is how that deduction is to be calculated ? This is a deduction from the Income Tax which the assessed is liable to pay. The deduction which is available under the phraseology employed by the legislature is "so much of the amount of income tax" and for calculating the deductions at the average rate it is first required to be ascertained. After this average rate has been calculated it has to be applied to the income so included (underlining, italicised in print, supplied) i.e., the inter-corporate dividend income and the deduction allowed by section 85A is equivalent to the difference between this average rate and 25 per cent on the inter-corporate dividend. Once the provisions of section 85A are split up in this manner, then it will have to be conceded that the meaning of the statutory provision is plain and unambiguous ....."

5. Though, Mr- Khanna, learned counsel for the revenue, has cited a number of cases in support of the view taken by the Tribunal, but we do not consider it necessary to refer to these decisions as we find that the issue, subject-matter of this reference, has been dealt with in great detail in Birla Bomdays case (supra), with which we are in respectful agreement. As a matter of fact it has been very fairly conceded by Mr. S.K. Aggarwal, learned counsel for the assessed, that in the light of a long line of decisions, the view taken by the, Tribunal cannot be faulted.

Accordingly, following the decisions of the Calcutta High Court in Raleigh Investment Co.'s case (supra) and of the Bombay High Court in Birla Bombay (P) Ltd.'s case (supra), we answer the question referred in the affirmative i.e., in favor of the revenue and against the assessed.

The reference stands disposed of with no order as to costs.

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