IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1372 OF 2013

Commissioner of Income Tax-10, Mumbai … Appellant
v/s
M/s.Indian Oil Corporation Ltd. ... Respondent

Mr.Arvind Pinto for the appellant.
Mr.R. Murlidharan i/by Atul Jasani for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 29TH JUNE, 2015

P.C.:

This appeal by the revenue under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the impugned order dated 2 November 2012 passed by the Income Tax Appellate Tribunal (the Tribunal). The assessment year involved is 2003-04.

2 Mr.Pinto, learned counsel appearing for the revenue urges the following question of law for our consideration :

(1) Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in holding that the respondent Company was entitled to deduction of gross dividend under Section 80-M, whereas the Apex

Court had in Distributors Baroda Pvt. Ltd. (155 ITR 120) held that only net dividend is deductible ?

(2) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that the profits of the Marketing Division of the respondent Company are entitled for deduction under Section 80-IB, whereas intention of the Legislature was to give deduction for the profits of only industrial undertaking ?

3 **Regarding question No.1**:

(a) The respondent-assessee had claimed deduction of Rs.47,39,36,11,900/- under Section 80-M of the Act being the gross dividend received during the assessment year 2002-03. The Assessing Officer held that the claim for deduction under Section 80-M of the Act would be available on net basis and not on the basis of gross dividend as claimed. This by placing reliance on the judgment of the Supreme Court in ***Distributors (Baroda) P. Ltd. v/s Union of India & ors.***, reported in ***155 ITR 120.*** Consequently, the Assessing Officer disallowed an estimated expenditure of 2% of administrative and other expenses including salaries, Provident Fund, etc. The Assessing Officer did not accept the respondent's contention that as no expenditure was incurred for earning the dividend income in the subject assessment year, no administrative expenditure could be attributed to it.

(b) In appeal, the Commissioner of Income Tax (Appeals) upheld the decision of the Assessing Officer. This on the ground that the respondent had failed to prove the interest bearing funds (loan taken) were not invested in shares for earning dividend income.

(c) On further appeal, the Tribunal, on consideration of all the facts, records that the dividend was received from six companies in which an investment aggregated to Rs.5,363.08 crores as on 31 March 2013. This also includes the fact that further amount of Rs.680 crores invested during the subject assessment year. All other investments were made during the earlier years. However, it is recorded by the Tribunal that for the earlier assessment year no disallowance was made on account of interest or any other expenses while allowing the claim for deduction of dividend received on gross basis under Section 80-M of the Act. Besides, during the subject assessment year and earlier, the assessee's own funds were available in excess of the investment made. The summary of available funds as recorded in the impugned order is as under :

Assess-ment year	Owned fund		Total owned funds	Investment at year end	Profit after tax butbefore depreciation	Increase/Decrease) in investment
	Share capital	Reserve & surplus				
1999-2000	389.31	11,879.52	12268.83	5567.88	3290.9	-3714.89
2000-2001	778.67	13,286.08	14064.75	3148.85	4394.3	-2419.02
2001-2002	778.67	15,192.30	15970.97	3443.73	3924.04	294.88
2002-2003	778.67	14532.36	15311.03	9721.72	4264.23	*1,201.99
2003-2004	778.67	18149.32	18927.99	5363.08	7771.17	717.36

Further, the Tribunal also records the fact that most of the borrowings which were taken for import of crude oil and financing projects have been repaid in the earlier years. On the aforesaid facts, the Tribunal placed reliance on the principles set out by this Court in ***C.I.T. v/s Reliance Utilities & Power Ltd., 313 ITR 340,*** that if there are sufficient interest free funds available with an assessee and overdraft and/or loans (interest bearing funds) are also taken, yet a presumption would arise that the investments were from the interest-free funds available with the assessee. Thus, the entire deduction as claimed on the gross basis by the respondent-assessee was allowed.

(d) The grievance of the revenue is that the impugned order failed to follow the decision of the Supreme Court in ***Distributors (Baroda) P. Ltd.*** (supra). It is submitted that deduction had to be allowed only on net basis and not on gross basis as claimed under Section 80-M of the Act.

(e) It is undisputable that the Hon'ble Supreme Court in ***Distributors (Baroda) Pvt. Ltd.*** (supra) has held that deductions under Section 80-M would not be of the gross amount but of the net amount of dividend received i.e. after deducting the interest paid on monies borrowed. In the facts before the Hon'ble Apex Court, the Distributors (Baroda) Pvt. Ltd. borrowed to invest in shares for earning dividend income. Thus the decision in the case of ***Distributors (Baroda) P. Ltd.*** (supra) is distinguishable in facts as in those facts there was interest paid on money borrowed to make investment in companies which resulted in income to the assessee therein. This is not so factually in this case. The decision of the Apex Court would have no application in the present facts and hence gross dividend and net dividend received is the same. In the present facts, as amply demonstrated in the impugned order, the respondent-assessee had its own funds available to make the investment. Therefore, the presumption as set out in ***Reliance Utilities & Power Ltd.*** (supra) would apply, which presumption the revenue has not disturbed. Moreover, for the earlier assessment year, the revenue has extended the benefit of deduction under Section 80-M as claimed by the respondent-assessee without deducting any amount. In view of the above, the impugned order has granted deduction under Section 80-M of the Act as claimed.

(f) This finding of the Tribunal being essentially a finding of fact which is not shown to be perverse or arbitrary. Therefore, question No.1 as proposed does not require consideration as it does not give rise to a substantial question of law.

7 **Regarding question No.2**:

(a) We find that the impugned order the Tribunal has upheld the respondent's claim for deduction under Section 80-I of the Act by merely following its own decision in the case of ***Hindustan Petroleum Corpn. Ltd.*** reported in ***35 TTJ 400***, which has been upheld by this Court in Income Tax Appeal No.57 of 2002 ***C.I.T. v/s***

Hindustan Petroleum Corpn. Ltd., delivered on 24 July 2006. In the above decisions wherein in respect of identical issue, this Court has held that deduction under Section 80-I of the Act refers to profits and gains from industrial undertaking. It held that manufacturing, processing and marketing are part of the industrial undertaking.

8 In view of the above, no fault can be found with the impugned order of the Tribunal in the absence of the revenue has pointing out that the ***Hindustan Petroleum Corpn. Ltd.***'s case (supra) as decided by this Court is not applicable to the present facts. Accordingly, question No.2 does not raises a substantial question of law for our consideration.

9 Accordingly, appeal dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***