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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 612/2004

M/S H.B.LEASING & FINANCE CO. Appellant

Through: Mr. Ashok K. Aggarwal, Adv.

versus

THE COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Ashok K. Manchanda, Adv.

+ ITA 615/2004

M/S R.R.B.SECURITIES LTD. Appellant

Through: Mr. Ashok K. Aggarwal, Adv.

versus

THE COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Asheesh Jain, Adv.

+ ITA 1775/2006

M/S H.B.LEASING & FINANCE CO. Appellant

Through: Mr. Ashok K. Aggarwal, Adv.

versus

THE COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Ashok K. Manchanda, Adv.

+ ITA 1776/2006

M/S H.B. STOCKHOLDINGS LTD. Appellant

Through: Mr. Ashok K. Aggarwal, Adv.

versus

THE COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Asheesh Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
12.01.2017

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1. The Court had framed the following question of law. Though the questions of law framed are same, the amount involved and the Assessment Year in question are different.

“Whether the Tribunal was right in law in holding, on true and correct interpretation of Section 80 M of the Act, that the Appellant did not distribute the dividend on or before the due date and, therefore, the Appellant was not entitled to deduction of Rs.57,44,216/- under Section 80M of the Act in the assessment year 1994-95?...”

2. The assessee in the concerned AYs had declared dividends at the fag-end of the period in which the returns could be filed for the related assessment years. In all these cases the dividends were declared just before the returns could be filed.

3. The assessees’ claim for benefit under Section 80M was rejected by the Assessing Officer (AO); however the CIT(A) relied upon a circular of the Central Board of Direct Taxes (CBDT) dated 03.08.1990. The CIT(A) also relied upon the judgment of the Supreme Court in ***Kishanchand Chellaram vs CIT (1962) 46 ITR 640 (SC)***. That judgment had in turn relied upon the judgment in the case of ***Punjab Distilling Industries Ltd. vs CIT (1965) 57 ITR 1 (SC)***. This Court in ***M/s Kap Co. General Ltd. vs Commissioner of Income Tax*** (ITA No. 561/2004), decided on 22.11.2016, had answered an identical question of law in favour of the Revenue in the following terms:

“.....The assessee had claimed benefit under Section 80M

of the Act contending that dividends have been duly distributed to its shareholders, before the due date prescribed for the purpose. The assessee's contentions were concurrently rejected by the three authorities, i.e., the AO, the CIT(A) and the ITAT. It was noticed by these authorities that even though the assessee showed that cheques were dispatched/made over to the shareholders, there was no actual pay out before the concerned date.

The ITAT had relied upon the judgment in **CIT Vs Jamndas Srinivas Pvt. Ltd** , reported in [1970] 76 ITR 656 for interpretation of the expression "distribution"; the judgment in **Shashibala Navnitlal. Vs Commissioner Of Income-Tax, Gujarat**. 54 ITR 478 (Guj) and the judgment in **Punjab Distilling Industries Ltd. Vs. CIT** 57 ITR 2. In that case the Court had held that "distribution" meant in the context of dividend "to give to several persons" and that the word connotes "something actual and not notional".

In view of this clear proposition of law enunciated by larger bench of five judges in **Punjab Distilling Industries Ltd.** (supra), we are of the opinion that there is no infirmity in the findings given in this case by the ITAT. The question of law is therefore answered in favour of the revenue and against the assessee. The appeal is therefore dismissed...."

4. The assessee had relied upon the CBDT's circular in addition to judgment cited by its counsel. The learned counsel also distinguished the judgment in **Punjab Distilling Industries** (supra) and subsequent decisions in **CIT vs Express Newspapers Ltd. (1998) 230 ITR 477 (SC)** and **Rampur Distillery & Chemicals Co. Ltd. vs CIT (1991) 187 ITR 561 (SC)**. It was also highlighted that the assessee had opened a dividend account into which the amount had in fact been transferred on the same day.

5. In *Punjab Distilling Industries* (supra) the question which arose was whether the distribution of dividend was claimed to have taken place in a particular assessment year since it was declared though not paid. The statutory provisions which the Court was concerned with were Section 16(2) of the old Income Tax Act, 1922 read with Section 2(6A)(d). The Court held after a discussion of the provisions of law of both the Companies Act, 1956 and the Income Tax Act that mere declaration of dividend is not sufficient to qualify for a deduction in the books and that there should be actual payment to the shareholders. The judgment cited by the assessee, no doubt, also dealt with dividend distribution and their treatment in similar circumstances. At the same time these judgments have not taken note and dealt with larger Bench decision in *Punjab Distilling Industries* (supra).

6. In the light of the above, having regard to the previous order in *Kap Co. General Ltd.* (supra) of this Court, the question of law framed is answered against the assessee and in favour of the Revenue. The appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 12, 2017/kk