IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE DR. JUSTICE ANITA SUMANTH

T.C.(A).No.1102 of 2009

Commissioner of Income Tax,
Chennai. .. Appellant/Respondent

Vs

M/s.Titan Industries Ltd.,
No.3, SIPCOT Industrial Complex,
Hosur - 635 126 .. Respondent/Appellant

Prayer : Tax Case (Appeal) is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 03.04.2009 passed in ITA No.1102/Mds/2008 for the Assessment year 2003-04 filed against the revision order dated 28.03.2008 me in C.NO.218((58 to 60) CIT-1/263/2007-08 on the file of the Commissioner of Income Tax, Chennai I, for the Assessment Year 2003-04.

For Appellant : Mr.M.Swaminathan
Sr.Standing Counsel

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

(Judgment of the Court was delivered by
DR.ANITA SUMANTH, J.)

The Revenue has preferred this appeal challenging an order passed by the Income Tax Appellate Tribunal in ITA No.1102/Mds/2008 dated 03.04.2009 in respect of Assessment year 2003-04.

2. The assessee/respondent is a company and was in receipt of inter-corporate dividend of a sum of Rs.9.03 crores during the financial year relevant to assessment year 2003-04.

Deduction under Section 80M of Income Tax Act (in short 'the Act') was claimed. The claim was accepted by the Assessing Officer while framing an order of assessment dated 24.03.2006 in terms of section 143(3) of the Act. 3. The Commissioner of Income Tax, however, in exercise of powers under section 263 of the Act, revised the assessment restricting the claim under section 80M of the Act to an amount of Rs.7.9 crores being dividend declared by the assessee in the financial year relevant to assessment year 2003-04. According to the Commissioner, the amount of deduction claimed could not have exceeded the amount of dividend declared by the assessee on or before the due date for filing of return in the light of sub-Section 2 of Section 80M. He thus directed the Assessing Officer to restrict the claim of deduction under Section 80M to a sum of Rs.789.86 lakhs only.

4. As against the same, an appeal was filed before the Income Tax Appellate Tribunal. The Tribunal concluded that there was no condition imposed by law to support the stand of the CIT and accepted the stand of the assessee.

5. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the Revenue and Mr.R.Vijayaraghavan, learned counsel appearing for the assessee.

6. The provisions of section 80M provide for a deduction in respect of any income by way of dividends received from a domestic company and read thus:

> '80M.Deduction in respect of certain inter-corporate dividends.—(1) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date.
>
> (2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.
>
> Explanation.—For the purposes of this section, the expression "due date" means the date for furnishing

the return of income under sub-section (1) of section 139.’.

7. The provisions of Section 80M provide for a deduction in respect of the income received by way of dividend by a domestic company and contains two limbs: the dividend received must be of a quantum equal to the dividend distributed by the recipient company and the distribution of the dividend itself should be prior to the due date of filing of the return of income.

8. In the present case, the appellant has declared dividend of a sum of Rs.15.20 Crores for the periods 31.03.2002 and 31.03.2003. The distribution of such dividend has taken place only in the course of financial year 2003-04, prior to the due date for filing of return in respect of Assessment Year 2003 - 2004. This is an admitted position. The case of the Revenue is that the benefit of the dividend declared in respect of Assessment Year 2002-2003 cannot be taken by the Assessee particularly seeing as the provisions of Section 80M were themselves introduced only with effect from 01.04.2003.

9. We, however, find no fetter set out in the provision in this regard. Though the declaration of dividend by the appellant had been occasioned in the financial years 2001-02 as well as 2002-03, there is no dispute on the position that the dividend had in fact, been paid out by the assessee only during the relevant financial year and that too prior to the due date for filing the return. Accepting the submission of the Revenue, would, in our view tantamount to inserting a new condition in the statutory provision which is impermissible in law. We are thus in agreement with the Tribunal in their conclusion that the assessee is entitled to the deduction sought.

10. We draw support in this regard from the decisions of the Division Bench of the Delhi High Court in the case of Commissioner of Income Tax V. Delhi Tourism & Transportation Development Corporation Ltd. ((2013) 357 ITR 95 (Delhi) and the Bombay High Court in the case of Commissioner of Income Tax V. Saumya Finance and Leasing Co. P. Ltd. ((2008) 300 ITR 422 (Bombay), which have taken views similar to the one expressed by us above.

11. The substantial questions of law admitted for resolution are as follows:

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that for the purpose of Section M, “dividend distributed” would include dividends declared in the earlier year but paid out in the current year?

2. Whether on the facts and circumstances of

the case, the Tribunal was right in holding that dividend declared for a period when Section 80M was not in force but paid out after the section has come into effect, could be treated as part of the dividend distributed in the current year for the purpose of calculation of deduction under Section 80M?'

12. In the light of the discussion as above, both substantial questions of law are answered in favour of the assessee and against the Revenue.

13. The Tax Case (Appeal) is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Income Tax Appellate Tribunal,
Madurai (D) Bench.

2. The Commissioner of Income Tax,
Chennai I.

+1 cc to M/s.M.Swaminathan, Advocate Sr.No.81021
+1 cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate Sr.No.81238

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RSI(CO)
CSL/12.12.2018