

Commissioner Of Income-Tax, Bombay vs P.K. Jhaveri on 6 November, 1989

Equivalent citations: [1989]181ITR79(SC), AIRONLINE 1989 SC 208

Bench: J.S. Verma, N.D. Ojha, S. Ranganathan

ORDER

1. As directed by the Hon'ble Supreme Court of India by order dated. March 10, 1978, in Civil Appeal No. 579 of 1978, we submit as hereunder the statement of the case to that Hon'ble Court on the question directed to be referred.
2. The assessee is an individual and the assessment year involved is 1972-73 for which the previous year is Samvat year 2027. The assessee had, for the accounting period, a gross dividend income of Rs. 1,04,198. As interest on borrowings, made by him for the purpose of making the investments which earned the said income, the assessee had paid during the period, Rs. 44,219. In the assessment, the Income-tax Officer allowed relief under Section 80K of the Income-tax Act, 1961, only on Rs. 59,979, being the net dividend income arrived at by deducting from the gross receipt of the year by way of dividend the interest payments made in respect of the borrowings for investments made for earning that income.
3. The assessee took the matter in appeal before the Appellate Assistant Commissioner. It was contended before that appellate authority that the relief under Section 80K was to be allowed on the gross dividend receipt and not on the net amount. Relying on the decisions in Commissioner of Income-tax v. New Great Insurance Co. Ltd. , Commissioner of Income-tax v. Jagmohan Das Kapadia and Commissioner of Income-tax v. Industrial Investment Trust Co. Ltd. , the Appellate Assistant Commissioner upheld the assessee's contention and directed the Income-tax Officer "to allow relief under section on gross dividends and not net dividends".
4. It was against the said decision of the Appellate Assistant Commissioner that the Department had come up before the Tribunal in appeal. The Tribunal found no merit in the departmental stand. It observed :

The expression 'income by way of dividends' occurring in Sections 80K and 80M of the Income-tax Act, 1961, had come up for consideration before the Bombay High Court in the cases of Commissioner of Income-tax v. New Great Insurance Co. Ltd. and Commissioner of Income-tax v. Industrial Investment Trust Co. Ltd. . The same expression as occurring in the Companies '(Profits) Surtax Act, 1964, also had come up for interpretation before the same High Court in Commissioner of Income-tax v. Jupiter General Insurance, Co. . In all these cases, the conclusion reached is that the expression took in gross dividend received by an assessee-company unqualified by any limitation as suggested by the Department. Following the ratio in the case of New

Great Insurance Co. Ltd. , this Tribunal, in ITA. No. 35/Bom/73-74 in the, case of Shri B.M. Grievors, Bombay, also rejected the departmental stand for, working out relief under Section 80K on the basis of only the net dividend. We are told that the application made by the Department in that matter under Section 256(2) was rejected by the High Court. For all these reasons, we do not find any merit in this departmental-appeal. The same is hence dismissed.

5. On the above facts, the following question, as directed by the Hon'ble Court, is referred for its esteemed opinion :

Having regard to the definition of 'gross total income' under Section 80B(5), whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing deduction under Section 80K on the gross dividend income without taking into account deduction for interest paid on moneys borrowed specifically for investment in shares ?

6. This is a reference, at the instance of the Commissioner of Income-tax, Bombay, to this Court under Section 257 of the Income-tax Act, 1961 ("the Act"), by the Income-tax Appellate Tribunal. It is not necessary to set out the facts at length since the question referred has already been decided by this Court subsequent to the reference.

7. The question that has been referred to us reads as follows:

Having regard to the definition of 'gross total income' under Section 80B(5) whether, on the facts and in the circumstances' of the case the Tribunal was justified in allowing deduction under Section 80K on the gross dividend income without taking into account deduction for interest paid on moneys borrowed specifically for investment in shares ?

8. The question posed has been answered in the negative by the decisions of this Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT and in the case of Distributors (Baroda) P. Ltd. v. Union of India . It may be mentioned that the statutory provisions have also been subsequently modified by the insertion of Section 80AB with effect from April 1, 1981.

9. In view of the above decisions, the question referred to us is answered in the negative and in favour of the appellant. The Tribunal will dispose of the case conformably to this judgment under Section 260 of the Act.

10. There will be no order as to costs.