

## **Commissioner Of Income-Tax, West ... vs Jardine Henderson Ltd. on 12 January, 1979**

**Equivalent citations: AIR1979SC1710, [1979]117ITR568(SC), (1980)3SCC67, AIR 1979 SUPREME COURT 1710, 1979 TAX. L. R. 1179, (1979) 1 TAXMAN 366 (SC), (1979) 1 TAXMAN 366, (1979) 10 CURTAXREP 102, (1979) 117 ITR 568**

**Bench: A.D. Koshal, D.A. Desai, P.N. Bhagwati**

### **ORDER**

1. This appeal by special leave is directed against an order passed by the High Court of Calcutta refusing an application made by the Commissioner for reference of a question of law said to arise out of the order of the Tribunal. The question is whether deduction under Section 80M of the Income-tax Act, 1961 is allowable on gross dividend or it is allowable only on net dividend arrived at after deducting the interest payable on moneys borrowed for the purpose of earning such dividend. This is undoubtedly a question of law, but we find that it is wholly academic to refer it, because it has been found by the Tribunal as a fact and which finding has become final, that no part of the borrowings was made for the purpose of earning, dividend and hence there was no question of deduction of any interest for the purpose of arriving at the net income by way of dividend. The question sought to be referred by the Commissioner does not, therefore, arise for consideration on this finding of fact reached by the Tribunal and it is wholly unnecessary to call for a reference as contended by the Commissioner.

2. We accordingly dismiss the appeal with costs.