

Supreme Court of India

Cit, Delhi vs Swaran Singh Kanwar on 26 February, 1997

Equivalent citations: AIR 1999 SC 1593, 1998 232 ITR 350 SC, JT 1998 (9) SC 249 a, (1997) 11 SCC 69

Bench: S Agrawal, G Pattanaik

ORDER

1. This appeal, by special leave, has been filed by the Revenue against the judgment of the Delhi High Court dated July 25, 1980 in I.T.C. No. 23 of 1980 whereby the High Court has dismissed the application filed by the Revenue under Section 256(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

The facts are in a narrow compass and may be stated as under.

2. The assessee had made investments in shares in industrial as well as non-industrial companies and for the purpose he had borrowed funds. In the assessment year 1972-73 the assessee has received Rs. 62,160/- as dividends on the said shares in the industrial as well as non-industrial companies. He had paid a sum of Rs. 55,197/- as interest on money borrowed for making investment in the shares. The amount received as dividend included Rs. 18,516/- received as dividend on the shares in Bharat Steel Tubes Ltd., an industrial company. In view of Section 80-K of the Act dividend on shares in an industrial company has to be deducted from the gross total income as defined in Clause (5) of Section 80-B of the Act. The Income-tax Officer disallowed the deduction to the extent of Rs. 51,612/- out of the interest amount of Rs. 55,197/- paid by the assessee but he permitted deduction of Rs. 18,516/- under Section 80-K. The said order of the Income-tax Officer was upheld in appeal by the Appellate Assistant Commissioner but on further appeal, the Income-tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') held that the amount of Rs. 51,612/- had been wrongly disallowed and should have been allowed. Since the Tribunal refused to make a reference, the Revenue moved the application in the High Court under Section 256(2) for an order directing the Tribunal to refer the following question for opinion: Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing the claim of interest amounting to Rs. 51,612/- paid on borrowed capital by the assessee for the purpose of shares when the dividend income therefrom was exempted under Section 80-K of the Income-tax Act?

3. By the impugned judgment the High Court has held that in view of Section 57(iii) the amount of interest paid on borrowed capital used for earning income had to be allowed as deduction and the question sought to be referred was only academic in nature. The application filed by the Revenue was, therefore, dismissed.

4. While we are in agreement with the order of the High Court rejecting the application under Section 256(2) of the Act, we find that the approach of the High Court has been influenced by the decision of this Court in Cloth Traders Pvt. Ltd. v. Addl. Commr. of Income-tax, which decision has subsequently been overruled by this Court in Distribution (Baroda) Pvt. Ltd. v. Union of India. In the circumstances it is necessary to clarify the position in this regard.

5. Section 80-K, since deleted by the Finance Act, 1986, fell in Chapter VI-A bearing the heading "Deductions in respect of Certain Incomes". It made provision for deduction in respect of dividends attributable to profits and gains from new industrial undertakings or ships or hotel business. Such deduction was to be made from the gross total income. The expression "gross total income" is defined in Clause (5) of Section 80-B to mean the total income computed in accordance with the provisions of the Act, before making any deduction under Chapter VI-A. This means that before applying Section 80-K it is necessary to determine the income in accordance with the other provisions of the Act, including Section 56 read with Section 57(iii) of the Act and only thereafter the deduction under Section 80-K has to be made. On that view of the matter the interest amount of Rs. 55,197/- paid on the borrowings for the investment in shares had first to be deducted out of the dividend income of Rs. 62,160/- and the balance amount would have been the income of dividend which could be taken into account for the purpose of deduction under Section 80-K. In other words, for the purpose of deduction under Section 80-K the income from dividends had to be taken as Rs. 6,963/- since the amount of dividend deductible under Section 80-K was Rs. 18,516/- and the said amount was in excess of the income of Rs. 6,963/- from dividend, the entire amount of Rs. 62,160/- received by way of dividend had to be excluded from the income of the assessee. The Tribunal was right in taking the said view. The appeal is accordingly dismissed. No order as to costs.