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

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ITA 54/2000

EICHER GOODEARTH LTD.

..... Appellant

Through: Mr. Ajay Vohra, Sr. Advocate with
Ms. Kavita Jha and Ms. Shraddha, Advocates.

versus

THE CIT

..... Respondent

Through: Mr. N.P. Sahni, Sr. Standing Counsel
with Mr. Nitin Gulati, Jr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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14.05.2015

1. The questions of law as framed originally were as follows: -
 1. “Whether the Tribunal was justified in law in holding that assessee-appellant was entitled to deduction under Section 80M of the Income-tax Act, 1961 in respect of net dividend and not gross dividend ?”
 2. “Whether the Tribunal was correct in holding that assessee’s shares were stock-in-trade and not investment shares ?”
 3. “Whether the Tribunal was correct in holding that expenditure under Section 36 (1) (iii) of the Act was not linked to earning of dividend income?”

2. In view of the developments which have occurred during the pendency of the appeal, i.e., the order passed by the Assessing Officer for AY 1993-94 and 1994-95 where the assessee's contentions have been dealt with and accepted in part so far as the administrative expenditure is concerned and in view of the order that we propose, the detailed factual narrative is inessential.

3. The assessee is aggrieved by the decision of the Income Tax Appellate Tribunal ("ITAT") which held that the interest expenditure incurred by it whilst repaying the loan (of ₹6.5 Crores) borrowed for the purpose of subscribing all the rights issue of Eicher Tractors Ltd. during AY 1994-95 (year ending 31.3.1994) had to be dealt with and allowed if at all under Section 57 of the Income Tax Act, 1961. In doing so, the ITAT rejected the assessee's contention that such interest by itself amounted to business expenditure and was properly admissible under Section 36 (1) (iii) of the Income Tax Act, 1961.

4. It is agreed by counsel for the parties that the decision of the Supreme Court in *Distributors (Baroda) Pvt. Ltd. v. Union of India & Ors.*, 155 ITR 120 concludes the first issue inasmuch as it is the net dividend which is required to be taken into account under Section 80M read with Section 80AA of the Income Tax Act, 1961.

5. The second question according to us does not arise at all - a view shared by counsel for both the parties.

6. Counsel for the assessee relies upon the decisions of the Supreme Court in *CIT v. Cocanada Radhaswami Bank Ltd.*, (1965) 57 ITR 306 and *United Commercial Bank v. CIT*, (1957) 32 ITR 688. These decisions emphasized that the head of income merely denotes

or characterizes the amount received as income but does not delineate the income for the purpose of its treatment especially when it relates to claim for interest. The assessee's argument more specifically in this case is that it had to borrow ₹6.5 Crores for the purpose of retaining control and interest in Eicher Tractors Ltd. Learned counsel argued that Eicher Tractors Ltd. is a company closely related to the assessee and has business nexus inasmuch as the assessee provides managerial personnel for which it receives service fee as well as technical support by way of providing access to its R&D facilities. The assessee, besides, also claims to receive license fee towards plant given to Eicher Tractors for carrying on its business activity. It is stated that furthermore the products of Eicher Tractors Ltd. are exported by the assessee. Such being the case, the assessee originally held and continued to hold shares in Eicher Tractors Ltd. when the latter came out with rights issue. The assessee felt compelled to subscribe to the rights issue and resorted to borrowings. This was necessitated because had the rights issue not been subscribed to, the assessee claims that its shareholdings would have diminished or been diluted.

7. Learned counsel relied upon the decision of the Gujarat High Court in *Addl. CIT v. Laxmi Agents P. Ltd.* (1980) 125 ITR 227 to say that in such circumstances even though the head of income derived, i.e., dividend would have to be dealt with and assessed under Section 56 (2) (i) of the Act, nevertheless the character of the income being essentially business in nature, the expenditure incurred has to be treated as such under Section 36 (1) (iii). He further relied upon the

decision of the Calcutta High Court in *CIT v. Rajeeva Lochan Kanoria*, (1994) 208 ITR 616 where in somewhat similar circumstances, the Court upheld the assessee's contention that such expenditure, i.e., interest on borrowings had to be dealt with under Section 36 (1) (iii) and not under Section 57. The Calcutta High Court on that occasion noticed previous authorities including the judgments of the Supreme Court. We also notice that this approach of recognizing the need to deal with such expenses as business expenditure under Section 36 (1) (iii) had been approved and adopted by two Division Bench rulings of this Court in *CIT v. Tulip Star Hotels Ltd.*, (2011) 16 Taxmann 335, *Commissioner of Income Tax v. Excellent Commercial Enterprises & Investments Ltd.* (2005) 147 Taxman 558 and *Commissioner of Income Tax v. Oriental Structural Engineers (P) Ltd.* (2013) 35 Taxmann 210.

8. Learned counsel for the Revenue urged that even though the ITAT precluded consideration of the expenditure under Section 36 (1) (iii) on the ground that shares were not held as stock-in-trade and such approach cannot be sustainable in law, nevertheless, the assessee's claim did not receive proper scrutiny by the lower authorities. Learned counsel highlighted that the CIT (A) as well as the ITAT went by whether the gross expenditure was net expenditure had to be taken into consideration while making deductions under Section 80M. It was submitted that in these circumstances, it would not be proper for this Court to render findings that the investments in this case made from the borrowings were in fact on account of strategic compulsions and not merely to derive income by way of dividends.

9. The judgments in *Cocanada Radhaswami Bank* and *United Commercial Bank (supra)* and the subsequent judgments in *Western States Trading (P) Ltd. v. CIT (1971) 80 ITR 21* and *Brooke Bond & Co. Ltd. v. CIT (1986) 162 ITR 372* are authorities that the heads of income enumerated in the Income Tax Act in Section 14 do not denote their essential characteristics. In other words that a business or an individual receives some amount which may be assessed as income of a particular kind would not be conclusively determinative of that character. In the facts of the present case, that principle, in the opinion of the Court, would squarely apply. If indeed the assessee had invested and subscribed to the rights issue in order to retain the control it originally did in Eicher Tractors Ltd, it can still be said that the expenditure was towards promotion of business and, therefore, properly entitled to be treated as such under Section 36 (1) (iii). At the same time, we are also of the opinion that there has been inadequate consideration and discussion on this aspect before the lower authorities, particularly the AO and the CIT (A). As has been pointed out on behalf of the Revenue, at that stage, the parties were more concerned with whether net or gross expenditure had to be deducted under Section 80M. At the same time, the assessee, we notice did put his contention both to the CIT (A) and ITAT.

10. This Court, therefore, is of the opinion that the law as declared by the Supreme Court in such cases is that if the expenditure is incurred for the purpose of promotion of business- more specifically as in the facts of this case to retain control or as part of a strategic investment of the assessee/company, such expenses – by way of

interest outgo would have to be treated under Section 36 (1) (iii) and not under Section 57. The matter is, therefore, remitted to the AO for full appraisal of the fact situation and findings in the light of our conclusions. If, as a result of the AO's determination, it is found that such expenditure is incurred, the net expenditure is obviously to be taken into consideration under Section 80M of the Act in the facts of the present case.

11. The appeal is partly allowed to the above extent.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MAY 14, 2015
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