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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.56 OF 2005

The Commissioner of Income-tax-3, ..Appellant
Aayakar Bhavan, M.K.Road,
Mumbai - 400 020.

V/s.

M/s.Saumya Finance & Leasing Co.(P) ..Respondent
Ltd., 84-A, Mittal Court,
224, Nariman Point,
Mumbai - 400 021.

Mr.Vinod Gupta with Mr.P.S.Sahadevan, Advocate, for
Appellant
Mr.J.D.Mistry with Mr.Raj Darak, Advocate, for
Respondent

**CORAM : F.I.REBELLO &
R.S.MOHITE, JJ.**

DATE : 23RD JANUARY, 2008

JUDGMENT (PER R.S.MOHITE, J.)

. The two questions of law, sought to be raised by the appellant in the appeal are as set out in paragraph 5 of the memo of appeal and are as under :-

- (i) Whether on the facts and in the circumstances of the case and in

law, the Hon'ble Tribunal was justified in dismissing the appeal of the Revenue by relying upon its own order vide ITA No.462/Mum/2002 dated 10.05.2002 in the case of M/s.Silvassa Industries (P) Limited and directed the A.O. to allow the deduction u/s.80M of the I.T.Act of Rs.2,19,97,105/- as against Rs.

Nil ?

- (ii) Whether on the facts and in the circumstances of the case and in law the Hon'ble Tribunal is correct in law in allowing deduction u/s.80M of the I.T.Act of Rs.2,19,97,105/- for A.Y. 1997-98 even though the dividend distributed is Interim Dividend related to A.Y. 98-99 ?

2. The brief facts of the case are as follows :-

- (a) During the financial year 1996-97, Assessee Company filed a return which included dividend income of Rs.2,69,16,774/-. During this financial year, since the Assessee Company earned a net profit of Rs.0.06 lakhs only, no dividend was declared by the Company. The due date for filing the tax returns for the financial year was 28th November, 2007. Before this due date the Assessee Company declared and distributed an amount of Rs.2,19,97,105/- by way of interim dividend for the financial year 1997-98.
- (b) When the returns were filed by the Assessee Company for the financial year 1996-97, the Company claimed a deduction of Rs.2,19,97,105/- from its profit, under Section 80M of the

Income Tax Act.

- (c) A deduction sought by the Assessee Company under Section 80M was disallowed by the Assessment Officer. The appeal filed by the Assessee Company on this point came to be allowed by the Commissioner of Income Tax (Appeals). In the second appeal filed by the revenue to the Income Tax Appellate Tribunal, the Tribunal by relying upon a Judgment of the Mumbai Bench delivered in ITA No.462/M/02 on 10th May, 2002 in the case of M/s.Silvassa Industries Private Limited passed an order on 23rd July, 2004 dismissing the appeal of the revenue. In the circumstances, the revenue has preferred the present appeal in this Court.

3. On behalf of the revenue it is contended that it is open to revenue to argue a question of law which had been decided in the case of M/s.Silvassa Industries Private Limited even, though, the Judgment of the Tribunal in the aforesaid case had not been challenged by way of an appeal. It is then contended that the interim dividend was declared by the Assessee Company in the financial year 1997-98 and out of income accrued in the said year. His further contention was that the dividend declared and paid in a subsequent year could not be a permitted deduction from the income in a previous year since the said dividend was paid out of income accruing in the subsequent year.

4. To appreciate the contention raised by the revenue, it is necessary to reproduce ("80M" as then existing) which was as under :-

"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"

5. On the bare reading of the Section it is clear that the deduction as permitted is of an amount equal to so much of the amount of income by way of dividend declared by the Company as does not exceed the amount of dividend distributed by the Assessee Company on or before the due date.

6. It is clearly seen that the section does not

provide for the nature of the dividend distributed by the Assessee Company. It does not state that the nature of the dividend distributed must be for the financial year under assessment. Accepting the argument of the revenue will amount to laying down an additional restriction to the effect that the dividend distributed by the Assessee Company must be for the financial year under assessment. Laying down such restricting qualification, in our view, will amount to doing violence to the plain and clear meaning of the words as contained in Section 80M.

7. Counsel appearing for the revenue sought to argue that where the literal meaning of the words contained in any provision of law, would lead to an absurd result i.e. a result not intended to be subserved, by the object of the legislation and if another construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction.

According to counsel for revenue, if a literal construction is given to Section 80M then it would lead to an absurd result, since the amount of deduction earned in the subsequent year will be permitted in respect of the income of the previous year. He placed strong reliance on the Judgment of the Apex Court in the case of **Varghese v. ITO (1981)**, reported in **131 ITR 597**. In that case the Apex Court while considering the interpretation to be given to Section 16(3) of the Income Tax Act observed as under :-

“If the purpose of a particular provision is easily discernible from the whole scheme of the Act, which in this case is to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned, then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result, i.e., a result not intended to be subserved by the object of the legislation found in the manner indicated before, then if another construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction.”

8. In our view, this is not a case where a literal construction to be given to Section 80M would lead to an absurd result. The intention of legislature while enacting Section 80M was clearly to ensure that the dividend income received by the Assessee Company should be permitted as a deduction only if it is re-distributed as dividend income to its shareholders. The section provided that the said distribution to be made before the due date of the filing of the returns. This has been done by the present respondent and all the requirements of Section 80M are clearly met by them.

9. In the net result, in our view, the questions as framed in the appeal do not arise and the appeal therefore, stands dismissed.

(R.S.MOHITE, J.)

(F.I.REBELLO, J.)