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CLOTH TRADERS (P) LTD., ETC.

v.

ADDL. COMMR. OF INCOME TAX, GUJARAT-I, ETC.

May 4, 1979

B [P. N. BHAGWATI, D. A. DESAI AND A. D. KOSHAL, JJ.]

Income Tax Act, 1961 (43 *of* 1961)—*Sections* 85*A* & 80*M*—*Whether rebate of income tax admissible on the amount of dividend received by the assessee company from an Indian company or whether confined only to dividend income as computed under the Act after making the deduction on the interest paid on borrowings for making the investments.*

C

The earliest provision granting exemption of super-tax in respect of inter-corporate dividends was made as far back as 9th December, 1933 in a Notification issued by the Governor General in Council and it provided as follows :

"The Governor General in Council is pleased to exempt from super-tax.

D (i) so much of the income of any investment trust company as is derived from dividend paid by any other company which has paid or will pay super-tax in respect of the profits, out of which such dividends are paid."

This Notification was followed by a provision of a similar kind granting exemption from super-tax in respect of certain specified categories of inter-E corporate dividends introduced as s. 56A in the Indian Income Tax Act, 1922. When this Act was repealed and the present Act enacted with effect from 1st April, 1962 s. 99, sub-section (1) was introduced in the present Act exempting certain categories of income from super-tax and one of such categories was that set out in cl. (iv). Section 99, sub-section (i) cl. (iv) read as follows :

"99(1) Super Tax shall not be payable by any assessee in respect F of the following amounts which are included in his total income—

(iv) if the assessee is a company, any dividend received by it from an Indian Company, subject to the provisions contained in the Fifth Schedule."

This provision continued to be in force upto 31st March, 1965 subject to a minor inconsequential amendment made by Finance Act, 1964, but by an G amendment made by Finance Act 10 of 1965, the provision was omitted and Chapter VI-A and s. 85A were introduced in the present Act with effect from 1st April, 1965. Chapter VIA comprised ss. 80A to 80D providing for certain specified deductions to be made in computing total income while s. 85A provided for deduction of tax on inter-corporate dividends.

H The original Chapter VIA and certain other sections including s. 85A were deleted from the present Act by Finance (No. 2) Act, 1967 with effect from 1st April, 1968 and replaced by a new Chapter VIA which contains a fasciculus of sections from s. 80A to s. 80VV. Section 80A, sub-section (1) provides that

in computing the total income of an assessee there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VIA, the deductions specified in s. 80C to s. 80VV and sub-section (2) of that section imposes a ceiling on such deductions by enacting that the aggregate amount of such deductions shall not, in any case, exceed the gross total income of the assessee. The expression "gross total income" is defined in cl. (5) of s. 80B to mean the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA or under s. 280. O Section 80M is the new section which corresponds to the repealed s. 85A and it provides for deduction in respect of certain categories of inter-corporate dividends. There were several amendments made subsequently in this section but they relate primarily to the percentage of the income to be allowed as a deduction.

One amendment that was made by Finance Act, 1968, was that the words "received by it" occurring in sub-section (1) of s. 80M were omitted with effect from 1st April, 1968. The Finance Act of 1968 also provided in sub-section (2) and (3) of s. 31 that notwithstanding the omission of s. 99, sub-section (1), cl. (iv) and s. 85A, the provisions of these sections shall have and be deemed always to have effect, subject to the modification that the words "received by it" in the opening part of these sections were deleted. The net effect of these amendments was that the words "received by it" following upon the words "dividend" were omitted with retrospective effect from s. 99 sub-section (1), cl. (iv) and s. 85A and s. 80M was to be read as if the words "received by it" were not in the opening part of that section.

The Gujarat High Court having taken a view against the assessees (appellants), appeals were preferred against the judgment relating to the assessment years 1965-66 and 1966-67 when s. 85A was in force.

In view of the conflict of opinion between the view of the Gujarat High Court, and the view taken by the Bombay, Madras and Calcutta High Courts, the Income Tax Appellate Tribunal, referred similar matters under s. 257 of the Act to this Court.

In the appeals and references before this Court, the question was whether on a true interpretation of Sections 85A and 80M of the Income Tax Act, 1961, rebate of income tax is admissible on the actual amount of dividend received by an assessee, being a company, from an Indian company, or it is confined only to the dividend income as computed in accordance with the provisions of the Act, that is after making the deductions specified in s. 57 including deductions of the interest paid on borrowings for making the investments.

Allowing the appeals and answering the questions referred by the Tribunal in favour of the assessees :

HELD : 1. The assessees are entitled to relief under s. 85A for the assessment years 1965-66, 1966-67 and 1967-68 and under s. 80M for the assessment years 1968-69 and 1969-70 in respect of the entire amount of dividend income without deductions of interest paid on borrowings for acquiring the shares.

[1006 B]

2. Sections 85A and 80M were not written by the Legislature on a clean slate, nor were they the outcome of any new or innovative exercise of legislative judgment, but they were preceded by similar provisions granting rebate of super-tax or income tax on inter-corporate dividends and these provisions as

A interpreted by the Courts throw light on the true meaning and content on ss. 85A and 80M. [991 F].

3. It is clear from the Notes on cl. 31 which subsequently became s. 31 of the Finance Act, 1968, that the amendments retrospectively deleting the words "received by it" from the opening part of s. 99, sub-section (1), cl. (iv) and s. 85A were made with a view to widening the scope of the relief granted B under these sections, as it was felt that the presence of these words might render these sections inapplicable in cases where the shares to which the dividend relates are registered in the name of a person other than the assessee and the dividend is, therefore, received strictly speaking, by such other person and not by the assessee. The object of introducing these amendments was to widen the scope of the tax relief provided under s. 99, sub-section (1), cl. (iv) and s. 85A by making it available to the assessee even though the shares to C which the dividend related were registered in the name of a person other than the assessee and not to narrow it down by restricting it to net dividend computed after making deductions allowable under the provisions of the Act. [998-E-G].

4. Even after the deletion of the words "received by it", the expressions "any dividend from an Indian company" and "any income by way of dividends from an Indian company" occurring in the opening part of these sections continue D to mean the same thing, namely, the full amount of dividend derived or obtained from an Indian company. The decisions of the Bombay, Calcutta and Madras High Courts interpreting these sections cannot, therefore, be said to be displaced by the retrospective omission of the words "received by it." [998 H-999 B].

5. It is clear on a plain natural construction of the language of s. 99 sub-E section (1), cl. (iv), that it grants exemption from super-tax in respect of "any dividend from an Indian company" and these last mentioned words cannot mean anything else than the full amount of dividend derived from an Indian company. They cannot obviously mean dividend from an Indian company minus any expenses incurred in earning it, or less any other deduction allowable under the Act. [999 C-D].

6. The words, "the following amounts which are included in his total in-F come", in the opening part of s. 99, sub-section (1) do not have any limitative effect so as to restrict "dividend from an Indian company" in respect of which exemption from super-tax is granted to dividend computed in accordance with the provisions of the Act and forming part of the total income. The exemption from super-tax granted under s. 99 sub-section (1) is not only in respect of "dividend from an Indian company" referred to in cl. (iv), but also in respect of other items of income mentioned in clauses (i) to (iii) and (v). G [999 E].

7. The legislature clearly wanted to provide that the different categories of income mentioned in clauses (i) to (v) should be eligible for exemption from super-tax, only if they are included in the total income and the Legislature could have made such a provision separately in respect of each category of income in the opening part of s. 99 sub-section (1), but instead of adopting such legislative device, which would have been both inapt and inelegant, the H Legislature chose to use an omnibus expression, "the following amounts which are included in his total income", which would cover all the different items of income dealt with in clauses (i) to (v). [999 F-G].

8. It would, therefore, seem that though the exemption from super-tax granted under clause (iv) of sub-section (i) of s. 99 would be applicable only if the particular item of income namely, "dividend from an Indian company" is included in total income, what is exempted is "dividend from an Indian company" which can only mean the full amount of dividend received from an Indian company. [1000 B]. A

Commissioner of Income Tax, Kerala v. *South India Bank Ltd.*, 59 ITR 763; referred to. B

9. Section 85A in its opening part by using the words "where the total income of an asessee .... includes any income by way of dividends, from an Indian Company", lays down a condition for its applicability, which is that the total income must include income by way of divdend from an Indian company. It is only if this category of income forms a component part of total income that the provisions enacted in the section is attracted and the assessee becomes entitled to rebate on income calculated with reference to the "income so included". [1001 F]. C

10. The meaning of the section would become clear if the words "income by way of dividends from an Indian company", are substituted for the words "income so included." Then it would be obvious that the rebate on income tax is to be calculated by applying the average rate of tax to the "income by way of dividends from an Indian company" which can only mean the full amount of dividend received from an Indian company. [1002 B-C]. D

Commissioner of Income Tax v. *Indian Guarantee & General Insurance Co. Ltd.*, 903 ITR 348 approved.

11. There is a close similarity between s. 85A and s. 80M so far as the opening part of the two sections is concerned, but in the latter part, there is a difference inasmuch as s. 85A provides for calculation of rebate of income tax on "income so included", while s. 80M provides for deduction of the whole or part of "such income by way of dividends". The language employed by the legislature in s. 80M leaves no doubt that the deduction, whether whole or 60 per cent, is to be calculated with reference to the entire amount of income by way of dividends. [1002 D-E]. E F

12. Section 80M occurs in Chapter VIA which is headed "Deduction to be made in computing total income". The marginal note to the section, indicates, that it provides for deduction in respect of certain inter-corporate dividends. [1002 F, 1003C].

13. Section 80A sub-section (1) provides that in computing the total income of an assessee, the deductions specified in s. 80C to 80VV shall be made from his gross total income, and gross total income, according to the definition in s. 80B, cl. (5) means the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA or under s. 280.O. What s. 80A, sub-section (1) requires is that first the total income of the assessee must be computed in accordance with the provisions of the Act without taking into account the deductions required to be made under Chapter VIA or under s. 280.O and then from the gross total income thus computed, the deductions specified in s. 80C to 80VV must be made in order to arrive at the total income. But sub-section (2) of s. 80A provides that the aggregate G H

A amount of the deductions required to be made under Chapter VIA shall not exceed the gross total income of the assessee so that the total income arrived at after making the deductions specified in s. 80C to 80VV from the gross total income can never be a minus or negative figure. This provision imposing a ceiling on the deductions which may be made under sections 80C to 80VV clearly postulates that in a given case the aggregate amount of these deductions may exceed the gross total income. [1002 G-1003 B].

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14. The words "where the gross total income of an assessee.... includes any income by way of dividends from a domestic company" are intended only to provide that a particular category of income, namely, income by way of dividends from a domestic company should form a component part of the gross total income. These words merely prescribe a condition for the applicability of the section namely, that the gross total income must include the category of C income described by the words "Income by way of dividends from a domestic company". If the gross total income includes this particular category of income, whatever be the quantum of such income included, the condition would be satisfied and the assessee would be eligible for deduction of the whole or 60 per cent of "such income". [1003 F-G].

D 15. The words "such income" as a matter of plain grammar must be substituted by the words "income by way of dividends from a domestic company", in order to arrive at a proper construction of the section and if that is done, it would be obvious that the deduction is to be in respect of the whole or 60 per cent of the "income by way of dividends from a domestic company" which can only mean the full amount of dividends received from a domestic company. The deduction permissible under the section is, therefore, to be calculated with E reference to the full amount of dividends received from a domestic company and not with reference to the dividend income as computed in accordance with the provisions of the Act, that is, after making deductions provided under the Act. [1004 B-C].

16. If the Legislature was of the view that the deduction should not be in respect of the full amount of dividends received from a domestic company, F but it should only be in respect of the amount of dividend computed after deducting allowable expenditure, the legislature would have undoubtedly amended s. 80M, sub-section (1) and made its intention quite clear. [1005 C].

17. The legislature in fact amended s. 80M several times in respect of other matters subsequent to the decision of the Bombay High Court in the *New Great Insurance Co.'s* case and the decision of the Madras High Court G in the *Madras Auto Service's* case, but it did not choose to amend the language employed in s. 80M, sub-section (1) for the purpose of overriding the interpretation placed by the courts. This indicates legislative recognition of the interpretation placed by the Courts on s. 85A and s. 80M. [1005 D-E].

18. Section 80K read with rule 20, s. 80MM, s. 80N and s. 80O which occur in the same group of sections as s. 80M, use the same legislative formula H as s. 80M and open with the identical words "where the gross total income of an assessee—includes any income." It appears on a plain reading of these sections that the deduction admissible is in respect of the whole of the income

received by the assessee and not in respect of the income computed after making the deductions provided under the Act. [1005 F-G] A

Madras Auto Service v. *Income Tax Officer*, 101 ITR 589; approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 117-118 of 1975.

(From the Judgment and Order dated 28-11-1973 of the Gujarat High Court in I.T.R. No. 21 of 1972). B

TAX REFERENCE NO. 2 OF 1975

(From the Tax Reference made by the Income Tax Tribunal Ahmedabad against its order dated 7-7-1973 in I.T.A. No. 643 (AHD)/71-72). C

TAX REFERENCE NOS. 6-9 OF 1975

(From the Tax Reference made by the Income Tax Tribunal Ahmedabad in R.A. Nos. 103-106/AHD/74-75 arising out of I.T.A. Nos. 946-949/AHD/72-73 for Assessing years 1966-67 to 1969-70). D

TAX REFERENCE NO. 16 OF 1975

(From the Tax Reference made by the Income Tax Tribunal Ahmedabad in Reference Application No. 62/AHD/74-75 arising out of I.T.A. No. 580/AHD/72-73). E

TAX REFERENCE NO. 18 OF 1975

(From the Tax Reference made by the Income Tax Appellate Tribunal, Ahmedabad Bench in R.A. No. 271/AHD/74-75 arising out of I.T.A. No. 2431/AHD/72-73 decided on 29-7-74 assessment year 1969-70). F

CIVIL APPEAL NOS. 117-118/75

For the Appellant : Mr. B. Sen, I. N. Shroff and H. S. Parihar.

For the Respondent : S. N. Kacker, Sol. Gen., B. B. Ahuja and Miss A. Subhashini.

For the Interveners : (1) Ramakrishna Sons Ltd. : S. P. Mehta, T. A. Ramachandran and M/s. J. Ramachandran, (2) M/s. Jardine Henderson Ltd. : Dr. Debi Pal and D. N. Gupta, (3) Indore Exporting & Importing Co. Ltd. : Dr. Debi Pal, Miss Bina Gupta and Mr. Praveen Kumar, and (4) Ketu Investments (P) Ltd. : S. T. Desai, Mrs. A. K. Verma and J. B. Dadachanji, K. J. John and Shri Narain. G

TAX REFERENCE NO. 2 OF 1975 H

For the Appellant : S. N. Kacker, Sol. Genl, S. P. Nayar and Miss A. Subhashini.

A *For the Respondent* : F. S. Nariman, I. N. Shroff, and H. S. Parihar.

For the Interveners : (1) M/s. Jardine Henderson Ltd. : Dr. Debi Pal and D. N. Gupta, (2) Indore Exporting & Importing Co. Ltd. : Dr. Debi Pal, Miss Bina Gupta and Mr. Praveen Kumar, and
B (3) M/s. Ajay Investment Co. : Praveen Kumar and Miss Bina Gupta.

TAX REFERENCE NOS. 6—9 OF 1975

For the Appellant : F. S. Nariman, I. N. Shroff, and H. S. Parihar.

For the Respondent : S. N. Kacker, Solicitor General, S. P. Nayar
C and Miss A. Subhashini.

For the Intervener Central India Industries : Dr. Debi Pal, Miss Bina Gupta and Mr. Praveen Kumar.

TAX REFERENCE NO. 16 OF 1975

For the Appellant : Mrs. A. K. Verma and J. B. Dadachanji, K. J.
D John and Shri Narain.

For the Respondent : S. N. Kacker, Sol. Genl. and Miss A. Subhashini.

For the Interveners-Central India Industries : Dr. Debi Pal, Miss Bina Gupta and Mr. Praveen Kumar.
E

TAX REFERENCE NO. 18 OF 1975

For the Appellant : S. P. Mehta, K. C. Patel, Shri Narain, J. B. Dadachanji, Mrs. A. K. Verma and Miss Arti Mehta.

For the Respondent : Miss A. Subhashini.

F *For the Intervener-Central India Industries Ltd* : Dr. Debi Pal, Miss Bina Gupta and Mr. Praveen Kumar.

The Judgment of the Court was delivered by

BHAGWATI, J.—This group of appeals and References raises a short question of construction of sections 85A and 80M of the Income
G Tax Act, 1961 (hereinafter referred to as the present Act). The question is whether on a true interpretation of these sections, rebate of income tax is admissible on the actual amount of divident received by an assessee, being a company, from an Indian company, or it is confined only to the dividend income as computed in accordance with the provisions of the Act, that is, after making the deductions specified
H in section 57 including deduction of the interest paid on borrowings for making the investments. The Gujarat High Court has taken a view against the assessee while a different view has been taken by the

Bombay, Madras and Calcutta High Courts. The appeals are preferred by the assessee, namely, Cloth Traders (P) Ltd. against the judgment of the Gujarat High Court and they relate to the assessment years 1965-66 and 1966-67 when section 85A was in force. The Reference before us have been made directly by the Tribunal under section 257 of the Act in view of the conflict of opinion amongst the High Courts. Out of these References, three are at the instance of the assessees, namely, C. V. Mehta (P) Ltd., M/s. Distributors (Baroda) Pvt. Ltd., and H. K. (Investment) Co. Pvt. Ltd. and one is at the instance of the Commissioner of Income-tax, Gujarat. They relate to different assessment years : assessment year 1969-70 in case of C. V. Mehta (P) Ltd. and Distributors (Baroda) Pvt. Ltd. and assessment years 1965-66 to 1969-70 in case of H. K. (Investment) Co. Pvt. Ltd. The interpretation of both sections 85A and 80M is involved in these References since section 85A with some minor alterations made in it from time to time was in force during the assessment years 1965-66 to 1967-68 and section 80M followed upon it with effect from the commencement of the assessment year 1968-69 as part of Chapter IVA. Though the language of sections 85A and 80M is almost identical, there are some verbal dissimilarities, but as we shall presently point out, they do not make any difference in interpretation so far as the present question is concerned.

We are concerned in these appeals and References only with the interpretation of sections 85A and 80M but in order to arrive at the true interpretation of these sections, it is necessary to refer briefly to the history of the legislation enacted in these sections, since these sections were not written by the Legislature on a clean slate, nor were they the out come of any new or innovative exercise of legislative judgment, but they were preceded by similar provisions granting rebate of super tax or income tax on inter-corporate dividends and these provisions as interpreted by the courts throw light on the true meaning and content of sections 85A and 80M.

The earliest provision granting exemption of super-tax in respect of inter-corporate dividends was made as far back as 9th December, 1933 in a Notification issued by the Governor General in Council and it provided as follows :

> "The Governor General in Council is pleased to exempt from super-tax—
>
> (i) so much of the income of any investment trust company as is derived from dividend paid by any other company

which has paid or will pay super-tax in respect of the profits out of which such dividends are paid."

This provision came up for consideration before a Division Bench of the High Court of Bombay in *Commissioner of Income Tax* v. *Industrial Investment Trust Co. Ltd.*(1) and the question was whether the dividend income exempted from super-tax was the entire income by way of dividend received by an investment trust company or the dividend income as computed in accordance with the provisions of the Act, that is, after deducting the expenses incurred in earning it. The High Court of Bombay held that the "dividend income which was exempted under the notification would be the dividend income received by the assessee and not the said income less any further amounts", because "the notification must be regarded as a self-contained one and not controlled by any other provisions of the Act" and there was "no warrant to construe the word 'Income' in the notification as total income, nor to qualify the dividend income specified in the said notification as the dividend income computed under section 12 of the Act". It was thus held that the entire amount of dividend received by an investment trust company would be exempt from super-tax and not the amount of dividend minus the expenses incurred in earning it. This Notification was followed by a provision of a similar kind granting exemption from super-tax in respect of certain specified categories of inter-corporate dividends introduced as section 56A in the Indian Income-tax Act, 1922 (hereinafter referred to as the Old Act) by Finance Act, 1953. It is not necessary to make any detailed reference to this provision since there is no decided case which has considered this provision or expressed an opinion upon it.

When the old Act was repealed and the present Act enacted with effect from 1st April, 1962, section 99, sub-section (1) was introduced in the present Act exempting certain categories of income from super-tax and one of such categories was that set out in clause (iv). Section 99, sub-section (1), clause (iv) read as follows :

"99(1) Super-tax shall not payable by an assessee in respect of the following amounts which are included in his total income.

(iv) if the assessee is a company, any dividend received by it from an Indian company, subject to the provisions contained in the Fifth Schedule".

(1) 67 I. T. R. 436.

This provision continued to be in force upto 31st March, 1965 subject to a minor inconsequential amendment made by Finance Act, 1964. Now a question arose before the High Court of Bombay in *Commissioner of Income Tax v. Indian Guarantee & General Insurance Co. Ltd.*(1) whether the exemption granted under this provision was in regard to the entire amount of dividend received by the assessee from an Indian company or it was limited to the dividend income computed in accordance with the provisions of the Act and forming part of total income. The argument of the assessee based on the words 'any dividend received by it from an Indian company' was that it was the full amount of dividend received by the assessee which was exempt from super-tax, while the Revenue relying on the words "amounts which are included in his total income" contended that it was only the amount of dividend computed in accordance with the provisions of the Act and forming part of total income which was entitled to the benefit of exemption under this provision. The High Court accepted the contention of the assessee and pointed out that on a plain reading of sub-clause (iv) of sub-section (1) of section 99 it was clear that the exemption from super-tax was granted in respect of "any dividend received by it from an Indian company" and these last words, according to their plain grammatical construction, could mean only one thing, namely, the entire amount of dividend received by the assessee from an Indian company and nothing less. The High Court emphasised the word "received" following immediately upon the word 'dividend' and observed that the use of this word also showed that the exemption was in regard to the dividend received and not in regard to the "dividend received minus the expenses". The High Court pointed out that the words "amounts which are included in his total income" in the opening part of section 99 sub-section (1) did not have any limitative effect, but they were used merely as a convenient mode of describing the different items of income set out in clauses (i) to (v) of that sub-section. Clauses (i) to (v) referred to different items of income which were sought to be exempted from super-tax under sub-section (1) of section 99 and it was only if these items of income were included in the total income of the assessee that the question of exemption from super-tax would arise and hence the legislature used the general words "amounts which are included in his total income" in the opening part of sub-section (1) of section 99 as an omnibus formula to cover these different items. These words according to the High Court were descriptive of the items of income included in the computation of the total income and were not indicative of the quantum

(1) 90 I. T. R. 348.

A of the amounts of the different items included in such computation and they did not, therefore, have the effect of cutting down the plain natural meaning of the words "any dividend received by it from an Indian company" which represented the quantum of income in respect of which exemption from super-tax was granted under the section. B This view, observed the High Court, not only followed logically and inevitably from the words used in the statutory provision, but was also in consonance with the object of the legislation, which was to prevent double taxation of the amount of dividend with the view to encouraging investment by companies in the share capital of other companies. It may be pointed out that the same view in regard to C the construction of clause (iv) of sub-section (1) of section 99 was taken by the Calcutta High Court in *Commissioner of Income-tax* v. *Darbhanga Marketing Co.*(1) and it was held that under that provision, exemption from super-tax was granted to an assessee in respect of "any dividend received by it" which meant the full amount of dividend received by the assessee and not "dividend received minus the D amount of interest on monies borrowed for earning the same". The Calcutta High Court observed : "The expressions 'which are included' in his total income' in sub-section (1) of section 99 and 'incomes forming part of total income' in the heading are descriptive of the items included in the computation of the total income and not indicative of the quantum of the amounts included under the different E items in the computation of total income. Such a construction of these expressions would be in harmony with the obvious meaning of the expression 'dividend received' ". The decision of the Bombay High Court in *Industrial Investment Trust Co's* case (supra) was strongly relied upon by the Calcutta High Court in coming to this decision and the view taken by the Calcutta High Court was noted with F approval by the Bombay High Court in *New Great Insurance Co's case* (supra). The same view was also taken by the Madras High Court in *Commissioner of Income-tax* v. *Madras Motor and General Insurance Co. Ltd.*(2) and it was approved in later decision of the same Court in *Madras Auto Service* v. *Income-tax Officer*(3). It G would, thus, be seen that notwithstanding the words "amounts which are included in his total income" in the opening part of sub-section (1) of section 99, all the three High Courts, namely, Bombay, Calcutta and Madras took the view that the entire amount of dividend received by the assessee from an Indian Company was exempt from

H (1) 80 I. T. R. 723.

(2) 99 I. T. R. 243.

(3) 101 I. T. R. 589.

super-tax and the exemption was not limited to dividend income computed in accordance with the provisions of the Act and forming part of the total income.

Section 99, sub-section (1) however remained in force only upto the close of the assessment year 1964-65 and by an amendment made by Finance Act 10 of 1965, section 99, sub-section (1) was omitted and Chapter VI-A and section 85A were introduced in the present Act with effect from 1st April, 1965. Chapter VI-A comprised sections 80A and 80D providing for certain specified deductions to be made in computing total income while section 85A, in so far as material, provides as follows :

> "85A. DEDUCTION OF TAX ON INTER-CORPORATE DIVIDENDS :—Where the total income of an assessee being a company includes any income by way of dividends received by it from an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, the assessee shall be entitled to a deduction from the income-tax with which it is chargeable on its total income for any assessment year of so much of the amount of income-tax calculated at the average rate of income-tax on the income so included (other than any such income on which no income-tax is payable under the provisions of this Act) as exceeds an amount of twenty-five per cent thereon;....."

There were some amendments made in section 85A by Finance Act, 1966 but they are not material for our present purpose and we need not refer to them. Section 85A also came to be considered by the Bombay High Court in the *New Great Insurance Co's* case (supra) because two of the assessment years with which the Bombay High Court was concerned in that case were assessment years 1965-66 and 1966-67 when section 85A was in force. The Bombay High Court pointed out that except for some minor verbal changes section 85A was almost in the same terms as section 99, sub-section (1), clause (iv), the only real differences being that the exemption granted under section 99, sub-section (1), clause (iv) was in regerd to super-tax, while the deduction allowed under section 85A was in regard to income-tax. The same interpretation was, therefore, placed on section 85A as in the case of section 99 sub-section (1), clause (iv) and it was held that under section 85A, the assessee would be entitled to de-

duction of income-tax in respect of the whole of the dividend received from an Indian company. The expression "where the total income .....includes any income by way of dividends" in the opening part of section 85A was construed as referring to the category of income by way of dividends received from an Indian company so that if this particular category of income is included in the computation of total income, the assessee would be entitled to a deduction of so much of the amount of income tax calculated at the average rate of income-tax on the "income so included" as exceeds an amount of twenty-five per cent of such income. The words "income so included" were read to mean not the quantum of the "income by way of dividends" included in the total income but the income falling within the category of "income by way of dividends from an Indian company" included in the total income. Thus the view taken by the Bombay High Court was that under Section 85A also, the deduction admissible was in respect of the entire dividend received by the assessee from an Indian company and not in respect of dividend income minus deductions allowable under the provisions of the Act in computing the total income.

The original Chapter VI-A and certain other sections including section 85A were deleted from the present Act by Finance (No. 2) Act, 1967 with effect from 1st April, 1968 and replaced by a new Chapter VI-A which contains a fasciculous of sections from section 80A to section 80VV. Section 80A, sub-section (1) provides that in computing the total income of an assessee there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VI-A, the deduction specified in section 80C to section 80VV and sub-section (2) of that section imposes a ceiling on such deductions by enacting that the aggregate amount of such deductions shall not, in any case, exceed the gross total income of the assessee. The expression "gross total income" is defined in clause (5) of section 80B to mean the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A or under section 280.O. Section 80M is the new section which corresponds to the repealed section 85A and it provides for deduction in respect of certain categories of inter-corporate dividends. It is the interpretation of this section which constitutes the subject matter of controversy between the parties and hence it would be desirable to set it out in extenso. This section has undergone changes from time to time since the date of its enactment and we will, therefore, reproduce it in the form in which it was during the assessment years 1968-69 and 1969-70 being the assessment years with which we are concerned in these cases :

"80M. DEDUCTION IN RESPECT OF CERTAIN INTER-CORPORATE DIVIDENDS :

(1) Where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, there shall, in accordance with and subject to the provisions of the section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends of an amount equal to—

(a) where the assessee is a foreign company—

(i) in respect of such income by way of dividends received by it from an Indian company which is not such a company as is referred to in section 10B and which is mainly engaged in a priority industry.....80% of such income

(ii) in respect of such income by way of dividends other than the dividends referred to in sub-clause (i).....65% of such income.

(b) where the assessee is domestic company in respect of any such income by way of dividends.....60% of such income."

There were several amendments made subsequently in this section but they relate primarily to the percentage of the income to be allowed as a deduction and do not have any bearing on the question of interpretation posed before us. One amendment is, however, material and that was made by Finance Act 1968 by which the words "received by it" occurring in sub-section (1) of section 80M were omitted with effect from 1st April, 1968. The Finance Act of 1968 also provided in sub-sections (2) and (3) of section 31 that notwithstanding the omission of section 99, sub-section (1), clause (iv) and section 85A, the provisions of those sections shall have and be deemed always to have effect, subject to the modification that the words "received by it" in the opening part of those sections were deleted. The net effect of these amendments was that the words "received by it" following upon the word "dividend" were omitted with retrospective effect from section 99, sub-section (1), clause (iv) and section 85A and section

A 80M was to be read as if the words "received by it" were not in the opening part of that section.

We shall presently consider the language of section 80M for the purpose of arriving at its true interpretation, but before we do so, we must refer to an argument advanced on behalf of the Revenue that B whatever might have been the interpretation placed on section 99, sub-section (1), clause (iv) by the Bombay, Calcutta and Madras High Courts and on section 85A by the Bombay High Court, it cannot hold good any more in view of the retrospective deletion of the words "received by it" in the opening part of these sections. The argument was C that the decisions of the Bombay, Calcutta and Madras High Courts upholding the view that the exemption from super-tax under section 99, sub-section (1), clause (iv) and the deduction of income-tax under section 85A were admissible in respect of the entire amount of dividend received by an assessee without any deduction, were based on the words "received by it" and since these words were retrospectively D omitted, these decisions could no longer be regarded as valid. We do not think this contention of the Revenue can be sustained if we have regard to the object and purpose for which the words "received by it" were deleted. It is clear from the Notes on clause 31 which subsequently became section 31 of the Finance Act, 1968 that the amendments retrospectively deleting the words "received by it" from the E opening part of section 99, sub-section (1), clause (iv) and section 85A were made with a view to widening scope of the relief granted under these sections, as it was felt that the presence of these words might render those sections inapplicable in cases where the shares to which the dividend relates are registered in the name of a person other than the assessee and the dividend is, therefore, received, strictly speak- F ing, by such other person and not by the assessee. The object of introducing these amendments was to widen the scope of the tax relief provided under section 99, sub-section (1), clause (iv) and section 85A by making it available to the assessee even though the shares to which the dividend related were registered in the name of a person G other than the assessee and not to narrow it down by restricting it to not dividend computed after making deductions allowed under the provisions of the Act. The omission of the words "received by it" does not, therefore, make any difference in the interpretation of section 99, sub-section (1), clause (iv) and section 85A so far as the present question is concerned. Even after the deletion of the words H "received by it", the expressions "any dividend from an Indian company" and "any income by way of dividends from an Indian company" occurring in the opening part of these sections continue to mean the

same thing, namely the full amount of dividend derived or moving from an Indian company. The decisions of the Bombay, Calcutta and Madras High Courts interpreting these sections cannot, therefore, be said to be displaced by the retrospective omission of the words "received by it". A

So far as section 99, sub-section (1), clause (iv) is concerned, we have no doubt that the interpretation placed on this provision by the Bombay, Calcutta and Madras High Courts is correct. The reasoning given by the Bombay High Court in *New Great Insurance Co.'s* case (supra) is unexceptionable and we find ourselves in agreement with it. It is clear on a plain natural construction of the language of this provision that it grants exemption from super-tax in respect of "any dividend from the Indian company" and these last mentioned words cannot mean anything else than the full amount of dividend derived from an Indian company. They cannot obviously mean dividend from an Indian company minus any expenses incurred in earning it, or less any other deduction allowable under the Act. It is no doubt true that the opening part of section 99, sub-section (1) contains the words "the following amounts which are included in his total income", but these words do not have any limitative effect so as to restrict "dividend from an Indian company" in respect of which exemption from super-tax is granted to net dividend computed in accordance with the provisions of the Act and forming part of the total income. It may be noticed that the ememption from supr-tax granted under section 99, sub-section (1) is not only in respect of "dividend from an Indian company" is not referred to in clause (iv), but also in respect of other items of income mentioned in clauses (i) to (iii) and (v). The Legislature clearly and understandably wanted to provide that the different categories of income mentioned in clauses (i) to (v) should be eligible for exemption from super-tax only if they are included in the total income and the Legislature could have made such a provision separately in respect of each category of income in the opening part of section 99, sub-section (1), but instead of adopting such legislative device, which would have been both inapt and inelegant, the Legislature chose to use an omnibus expression "the following amounts which are included in his total income", which would cover all the different items of income dealt with in clause (i) to (v). These words were introduced merely to provide that the category of income in respect of which exemption from super-tax is claimed must be included in the total income and they were not intended to refer to the quantum of such income included in the total income for exempting it from super-tax: they were descriptive of items of income included in the total B C D E F G H

A income and were not indicative of the quantum of the amounts included under different items in the computation of the total income. It would, therefore, seem that though the exemption from super-tax granted under clause (iv) of sub-section (1) of section 99 would be applicable only if the particular item of income, namely, "dividend from an Indian company" is included in the total income, what is B exempted is "dividend from an Indian company" which can only mean the full amount of dividend received from an Indian company.

This view which we are taking is clearly supported by the decision of this court in *Commissioner of Income-tax, Kerala* v. *South Indian* C *Bank Ltd.*(1) where the question was so as to the true interpretation of a notification issued by the Central Government under section 60A of the old Act which was in the following terms :

> "No income-tax shall be payable by an assessee on the interest receivable on the following income-tax free loans D issued by the former Government of Travancore or by the former Government of Cochin, provided that such interest is received within the territories of the State of Travancore-Cochin and is not brought into any other part of the taxable territories to which the said Act applies. Such interest shall, however, be included in the total income of the assessee for E the purposes of section 16 of the Indian Income-tax Act, 1922."

The argument of the Revenue was that the exemption from income tax granted under this notification was in respect of interest receivable on securities minus the expenses incurred in earning it and not in respect of the entire amount of interest because it was only that amount of interest arrived at after computation in accordance with section 8 of the old Act which was includible in the total income and liable to bear tax and the exemption from tax could, therefore, only be in respect of such amount. This argument was negatived by the Court and it was pointed out by Subba Rao, J., that : "this notification does not G refer to the provisions of section 8 of the Income-tax Act at all. It gives a total exemption from income-tax to an assessee in respect of the interest receivable on income-tax free loans mentioned therein. It gives that exemption subject to two conditions, namely, (i) that the interest is received within the territories of the State of Travancore-H Cochin, and (ii) that it is not brought into any other part of the taxable territories. It includes the said exempted interest in the total

(1) 59 I. T R. 763.

income of the assessee for the purpose of section 16 of the Income-tax Act. Shortly stated, the notification is a self-contained one; it provides an exemption from income-tax payable by an assessee on a particular class of income subject to specified conditions. Therefore, there is no scope for controlling the provisions of the notification with reference to section 8 of the Income-tax Act. The expression "interest receivable on income-tax free loans" is clear and unambiguous. Though the point of time from which the exemption works is when it is received within the territories of the State of Travancore-Cochin, what is exempted is the interest receivable. "Interest receivable" can only mean the amount of interest calculated as per the terms of the securities. It cannot obviously mean interest receivable minus the amount spent in receiving the same." It may be noted that the last part of this notification provided for inclusion "of such interest", that is, interest in respect of which exemption from tax was granted, in the total income of the assessee and obviously this would have to be done after computation in accordance with the provisions of section 8 of the old Act. But even so, it was held that the exemption from tax was in respect of the entire amount of interest received on the securities. The reasoning adopted in this decision clearly supports the view we are taking in regard to the construction of clause (iv) of sub-section (1) of section 99 and we must hold that the decisions of the Bombay, Calcutta and Madras High Courts lay down the correct law on the interpretation of this provision.

The next provision we must consider is section 85A which came in the wake of section 99, sub-section (1), clause (iv). This section lays down a condition for its applicability in its opening part by using the words "where the total income of an assessee—includes any income by way of dividend from an Indian company". The condition is that the total income must include income by way of dividends from an Indian company. It is only if this category of income from a component part of total income that the provision enacted in the section is attracted and the assessee becomes entitled to rebate on income calculated with reference to the "income so included". The argument of the Revenue was that the words "income so included" must mean the quantum of the income included in the total income and, therefore, rebate on income tax granted under section 85A can only be in respect of dividend income computed in accordance with the provisions of the Act and forming part of the total income and not in respect of the full amount of dividend received by the assessee. This argument is, in our opinion, fallacious. It is based on a misreading of the words "income so included" and ignores the context in which these words occur. If the opening part of the section refers to inclusion of the

particular category of income denoted by the words "income by way of dividends from an Indian company", the words "so included" cannot have reference to the quantum of the income included, but they must be held to refer only to the category of income included, that is, income by way of dividends from an Indian company. The meaning of the section would become clear if we substitute the words "income by way of dividends from an Indian company" for the words "income so included". Then it would be obvious—indeed it would need no argument to hold—that the rebate on income tax is to be calculated by applying the average rate of tax to the "income by way of dividends from an Indian company" which can only mean the full amount of dividend received from an Indian company. This was the view taken by the Bombay High Court in the New Great Insurance Co.'s case and we find ourselves in agreement with it.

We must now turn to consider section 80M for the purpose of arriving at its true interpretation. There is a close similarity between section 85A and section 80M so far as the opening part of the two sections is concerned, but when we come to the latter part, we find that there is a difference, inasmuch as section 85A provides for calculation of rebate of income tax on "income so included", while section 80M provides for deduction of the whole or part of "such income by way of dividends". Even if there by any doubt or ambiguity in regard to the meaning of the words "income so included" in section 85A, though we do not think that there is any scope for such doubt or ambiguity, the language employed by the Legislature in section 80M is much clearer and leaves no doubt that deduction, whether whole or 60 per cent, is to be calculated with reference to the entire amount of income by way of dividends received from a domestic company. Section 80M occurs in Chapter VI-A which is headed "Deduction to be made in computing total income". Section 80A, sub-section (1) provides that in computing the total income of an assessee, the deductions specified in sections 80 C to 80 VV shall be made from his gross total income and gross total income, according to the definition in section 80B, clause (5), means the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI A or under section 280.O. What section 80 A, sub-section (1) requires is that first the total income of the assessee must be computed in accordance with the provisions of the Act without taking into account the deductions required to be made under Chapter VI-A or under section 280.O and then from the gross total income thus computed, the deductions specified in sections 80 C to 80 VV must be made in order to arrive at the total income. But sub-

section (2) of section 80 A provides that the aggregate amount of the deductions required to be made under Chapter VI-A shall not exceed the gross total income of the assessee so that the total income arrived at after making the deductions specified in sections 80 C to 80 VV from the gross total income can never be a minus or negative figure. This provision imposing a ceiling on the deductions which may be made under sections 80 C to 80 VV clearly postulate that in a given case the aggregate amount of these deductions may exceed the gross total income. It is in the context of this background that we have to determine the true interpretation of section 80 M, which, as the marginal note indicates, provides for deduction in respect of certain inter-corporate dividends. Section 80 M, sub-section (1) opens with the words "Where the gross total income of an assessee—includes any income by way of dividends from a domestic company" and proceeds to say that in such a case there shall be allowed in computing the total income of the assessee a deduction "from such income by way of dividends" of an amount equal to the whole of such income or 60 per cent of such income, as the case may be, depending on the nature of the domestic company from which the income by way of dividends is received. Now the words "such income by way of dividends" must be referable to the income by way of dividends mentioned earlier and that would be income by way of dividends from a domestic company which is included in the gross total income. The whole of such income that is, income by way of dividends from domestic company or 60 per cent of such income, as the case may be, would be deductible from the gross total income for arriving at the total income of the assessee. The words "where the gross total income of an assessee.... includes any income by way of dividends from a domestic company" are intended only to provide that a particular category of income, namely, income by way of dividends from a domestic company, should form a component part of the gross total income. These words merely prescribe a condition for the applicability of the section, namely, that the gross total income must include the category of income described by the words "income by way of dividends from a domestic company." If the gross total income includes this particular category of income, whatever be the quantum of such income included, the condition would be satisfied and the assessee would be eligible for deduction of the whole or 60 per cent of "such income". Now, if the words "where the gross total income of an assessee—includes any income by way of dividends from a domestic company" in the opening part of the section refer only to the inclusion of the category of income denoted by the words "income by way of dividends from a domestic company" and not to the quantum of the income so included,

A the words "such income" cannot have reference to the quantum of the income included, but they must be held referable only to the category of the income included, that is, income by way of dividends from a domestic company. The words "such income" as a matter of plain grammar must be substituted by the words "income by way of dividends from a domestic company" in order to arrive at a proper construction of the section and if that is done, it would be obvious that the deduction is to be in respect of the whole or 60 per cent of the "income by way of dividends from a domestic company" which can only mean the full amount of dividends received from a domestic company. The deduction permissible under the section is, therefore, to be calculated with reference to the full amount of dividends received from a domestic company and not with reference to the dividend income as computed in accordance with the provisions of the Act, that is, after making deductions provided under the Act. This was the view taken by the Madras High Court in *Madras Auto Service* v. *Income-tax Officer, Madras*(1) and it meets with our approval. It is true that the Gujarat High Court has taken a contrary view in *Cloth Traders Pvt. Ltd.* v. *Commr. of Income-tax, Gujarat,* which is the subject matter of Civil Appeals Nos. 117 and 118 of 1975, but we think it proceeds on an erroneous interpretation of the language of section 80M, sub-section (1). It wrongly construes the words "such income" to be referable to the quantum of income includible in the gross total income, overlooking the fact that the opening words in the section, namely, "where the gross total income of an assessee-includes any income by way of dividends from a domestic company" refer only to the inclusion of the category of income by way of dividend from a domestic company and they are not indicative of the quantum of the income included in the gross total income. It is true that on this view the deduction in respect of the income by way of dividends from a company falling within cl. (a) of sub-section (1) of s. 80M may exceed the quantum of such income included in the gross total income, but that possibility is indeed contemplated and taken care of by section 80A, sub-section (2) which provides that the aggregate amount of the deductions shall not in any case exceed the gross total income of the assessee.

We may point out that even though the consistent view taken by the Bombay, Madras and Calcutta High Courts in regard to the interpretation of section 99, sub-section (1), clause (iv) was that the exemption from super-tax under that provision was admissible in respect of

(1) 101 I. T. R. 589.

the full amount of dividends received from an Indian company and was not limited to the dividend income computed in accordance with the provisions of the Act and forming part of total income and the same view was taken by the Bombay High Court in the *New Great Insurance Co.* case (supra) in regard to the interpretation of s. 85A which contained the opening words "where the total income of an assessee—includes any income by way of dividends from an Indian company", similar to the opening words in sub-section (1) of section 80M and the Madras High Court also placed the same interpretation on section 80M, sub-section (1) in *Madras Auto Service* case (supra), the legislature did not choose to make any amendment in the language of section 80M, sub-section (1) with a view to setting at naught this judicial interpretation. If the legislature was of the view that the deduction should not be in respect of the full amount of dividends received from a domestic company, but it should only be in respect of the amount of dividends computed after deducting allowable expenditure, we have no doubt that the legislature would have amended section 80M, sub-section (1) and made its intention quite clear. The legislature in fact amended section 80M several times in respect of other matters subsequent to the decision of the Bombay High Court in the *New Great Insurance Co.'s* case and the decision of the Madras High Court in the *Madras Auto Service's* case, but it did not choose to amend the language employed in s. 80M, sub-s. (1) for the purpose of overriding the interpretation placed by the courts. This would seem to indicate legislative recognition of the interpretation placed by the courts on s. 85A and s. 80M and it is a circumstance, though not of much weight, which lends support to the view we are taking in regard to the interpretation of s. 80M.

We may also in this connection refer to section 80K read with Rule 20, section 80 MM, section 80 N and section 80 O which occur in the same group of sections as section 80-M. These sections use the same legislative formula as section 80-M and open with the identical words "where the gross total income of an assessee.....includes any income.....". It appears on a plain reading of these secions that the deduction admissible is in respect of the whole of the income received by the assessee and not in respect of the income computed after making the deductions provided under the Act. Vide *Madras Auto Service* case (supra) and *Additional Commissioner of Income Tax* v. *Isthmian India Maritime P. Ltd.*(1). We derive considerable support for our view from the analogy of these sections.

(1) (1978) 113 I. T. R. 570 (Mad.)

A We, therefore, allow Civil Appeals Nos. 117 and 118 of 1975 and answer the question referred to the Tribunal in those appeals in favour of the assessee and against the Revenue. The questions referred by the Tribunal in Tax References Nos. 2, 6 to 9, 16 and 18 of 1975 are also answered in favour of the assessee and against the Revenue. We hold that the assessees in these appeals and References are entitled B to relief under section 85A for the assessment years 1965-66, 1966-67 and 1967-68 under section 80M for the assessment years 1968-69 and 1969-70 in respect of the entire amount of the dividend income without deduction of interest paid on borrowings for acquiring the shares. The Commissioner will pay the costs of the appeals and the references C to the respective assessees.

N.V.K. *Appeals allowed.*