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DISTRIBUTORS (BARODA) PVT. LTD.

v.

UNION OF INDIA AND TWO ORS.

B

July 1, 1985

[Y.V. CHANDRACHUD, C.J., BHAGWATI, AMARENDRA NATH SEN, D.P. MADON AND M.P. THAKKAR, JJ]

C

Income Tax Act 1961 Sections 80M(1) and 80AA :

Income by way of intercorporate dividends—Deduction—Whether to be made with reference to full amount of dividend received or dividend computed in accordance with the provisions of the Act—Section 80AA—Whether retrospective in operation.

D

Constitution of India 1950, Artice 141 :

Supreme Court—Declaration of law—To be certain, definite and correct—Judicial decisions—Continuity and consistency—Essentiality—Pointed out—Earlier ruling of Court—Manifestly wrong, proceeds upon mistaken assumption with regard to existence or continuance of statutory provision, contrary to another E *decision of Court—Doctrine of stare decisis—No bar to over-ruling such decision—Decision of Court in fiscal matters—Interference in exceptional cases—Necessity of.*

Interpretation of Statutes :

F

Statutory provision—Meaning of—Interpretation on earlier statutory provision in different language and structurally different—Reference to and reliance on—Whether permissible.

Words and Phrases—Meaning of:

G

'Such income by way of dividends'—Meaning of—Section 80M Income Tax Act 1961.

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

This provision came up for consideration before a Division Bench of the High Court of Bombay in *CIT* v. *Industrial Investment Trust Co. Ltd.* (1968) 67 I.T.R. 437. The High Court guided by a decision of this Court in *CIT* v. *South India Bank* (1966) 59 ITR 763 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 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 computed under Section 12 of the Act. B C

A provision of a similar kind granting exemption from super tax in respect of certain specified categories of inter-corporate dividend was introduced as Section 56A of the Income Tax Act 1922 by the Finance Act, 1953.

When the Indian Income Tax Act, 1922 was repealed and the Income Tax Act, 1961 was enacted with effect from 1st April, 1902, Section 99, sub-section (i) was introduced in the new Act exempting certain categories of income from super tax and one such category was that set out in clause (iv) of Section 99 sub-section (1) which read as follows : D

> '99. (1) Super-tax shall not be 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." E

This provision continued in force upto Ist March, 1965 subject to a minor inconsequential amendment made by the Finance Act, 1964. F

This provision did not come up for interpretation before this Court only in *Cloth Traders Case*, but it came to be considered by some of the High Courts.

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The three High Courts of Bombay, Calcutta and Madras *C.I.T* v. *New Great Insurance Company Ltd.* (1963) 90 ITR 348, *C.I.T.* v. *Darbhangha Marketing Company* Ltd. 1971 80 ITR 72 and *Madras Auto Service* v. *I.T.O.* (1975) 101 I.T.R. 589] on a construction of clause (iv) of sub-section (1) of section 99, took the view that the entire amount of dividend received by the assessee from an Indian Company was exempt from 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. H

Section 99 sub-section (i) remained in force only upto the close of the assessment year 1964-65 and by an amendment made by the Finance Act, 1965, Section 99 sub-section (1) was omitted and chapter IVA and section 85A were introduced in the present Act with effect from Ist April, 1965. Chapter IVA comprised section 80A to 80D providing for certain specified deductions to be made in computing total income, while Section 85A provided for deduction of tax on incorporate dividends.

This Section was also considered by the Bombay High Court in *New Great Insurance Company's Case.* The High Court observed 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 difference being that the exemption granted under section 99 sub-section (i) clause (iv) was in regard to super-tax, while the deduction allowed under section 85A was in regard to income tax, and held 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 'total income'

The spate of legislative changes did not come to an end with the enactment of section 85A. The Original Chapter VIA and certain other sections including section 85A were deleted from the present Act by Finance (No 2) Act, 1967 with effect from Ist April, 1968 and replaced by the 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 deduction specified in Section 80C to Section 80VV and sub-section (2) of that Section imposed a ceiling on such deductions by enacting that the aggregate amount of such deduction shall not in any case, exceed the gross total income of the assessee. The expression "gross total income" is defined in clause (V) of Section 80B to mean the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA or under Section 280D. 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. Several amendments were 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 the Finance Act, 1968 was that the words "received by it" occurring in sub-section (1) of Section 80M were omitted with effect from Ist April, 1968, so that right from the date of its enactment, section 80M sub-section (1) was to be read as if the words "received by it" were not in the opening part of that provision.

Petitioner No. 1 was incorporated as a Limited Company and Petitioner No. 2 a Director and shareholder therein. Petitioner No 1 received dividends on shares held by it in different domestic companies and paid interest on monies borrowed for the purpose of investment in such shares. In the course of its assessment for the assesment years 1970-71 up to 1980-81,

Petitioner No.1 claimed that the deduction permissible under Section 80M must be calculated with reference to the full amount of dividends received by Petitioner No.1 from the domestic companies and not with reference to the dividends as computed in accordance with the provisions of the Income Tax Act, 1961. The assessments of Petitioner No. 1 were actually completed on the basis of his claim and the view taken by this Court in *Cloth Traders* Case in regard to the construction of Section 80M. The Revenue preferred appeals against such assessments and these appeals were pending at different stages at the time of filing the Writ Petition.

The Petitioner No. 1 was entitled to succeed in the appeals as well as in the original assessments which were pending before the different authorities, so long as the decision in *Cloth Traders Case* stood unaffected by any constitutionally valid legislative amendment.

However, with a view to overriding the decision in the *Cloth Traders* case with retrospective effect, Parliament enacted Section 80AA and since this section was deemed to have been introduced in the Income Tax Act, 1961 with effect from Ist April, 1968, and it provided that the deduction required to be allowed under Section 80M shall be computed not with reference to the gross amount of dividend received by the assessee from a domestic company but with reference to the dividend income as computed in accordance with the provisions of the Act, the claim of petitioner No. 1 for deduction on the basis of the full amount of dividend received by it from domestic companies was liable to be rejected and deduction could be allowed to Petitioner No. 1 only with reference to the dividend income computed in accordance with the provision of the Act.

The introduction of Section 80AA thus had the effect of enhancing the tax liability of Petitioner No. 1 and the petitioners filed a Writ Petition challenging the Constitutional validity of Section 80AA on the ground that it enhanced the tax burden with retrospective effect going back for a period of almost 12 years and consequently imposed an unreasonable restriction on the right of petitioner No. 1 to carry on its business in breach of Article 19 (1) (g) of the Constitution.

Dismissing the writ petition,

HELD—(By the Court)

1. The deduction envisaged by sub-section (1) of Section 80M is required to be made with reference to the income by way of dividends computed in accordance with the provisions of the Income Tax Act and not with reference to the full amount of dividend received by the assessee.

[802F, 809A]

2. Section 80AA in its retrospective operation is merely declaratory of the law as it always was since Ist April, 1968 and no complaint can validly be made against it. [807E, 809D]

Cloth Traders Ltd. v. *Additional Commissioner of Income Tax*, 118 ITR 243, over-ruled *and Cambey Electrical Supply Industrial Co. Ltd.* v. *Commissioner of Income-Tax*, (1970) 113 84, approved.

(Per Chandrachud C.J., P.N. Bhagwati, D.P. Madon and M.P. Thakkar, JJ).

The Inquiry is not whether the view taken by the Bombay High Court in *New Great Insurance Company's* case is correct. It must be conceeded that it has been held to be correct in the decision in *Cloth Traders* Case However another view in regard to the interpretation of Section 85A is possible. It is not at all unreasonable to construe the words "income so included" as meaning the quantum of income by way of dividends included in the total income of the assessee. These words in the context in which they occur have obviously reference to quantum of the income by way of dividends to which the average rate of income tax is to be applied That quantum is defined by these words and in order to determine it, the question is what is the income by way of dividends included in the total income and the answer can only be that is income computed in accordance with the provisions of the Act. It is not necessary to consider whether the construction placed on Section 85A by the Bombay High Court in *New Great Insurance Company* Case is correct or not, because interpretation of Section 85A is not concerned. It is section 80M which has to be construed and this section, is materially different from Section 85A. Section 80M cannot be construed in the light of the interpretation placed on its predecessor section by the Bombay High Court particularily when Section 80M is admittedly worded differently from its predecessor section. Section 80M must be construed on its own language and its true interpretation arrived at according to the plain natural meaning of the words used by the Legislature. [795 D-H]

2. Section 80M is the new Section which corresponds to the repealed Section 85A and it provides for deduction in respect of certain categories of intercorporate dividends. It is the interpretation of this section which constitutes the subject-matter of controversy between the parties. [796 D]

3. What is the object behind grant of relief under Section 80M. The main object of the relief under Section 80M is to avoid taxation once again in the hands of the receiving company of the amount which has already borne full tax in the hands of the paying company. Now when an amount by way of dividend is received by the assessee from the paying company the full amount of such dividend would have suffered tax, in the assessment of the paying company in order to encourage inter-company investments. In order to encourage investments the Legislature intended that this amount should not bear tax once again in the hands of the assessee either its entirety or to a specified extent. But the amount by way of dividend which would otherwise suffer tax in the hands of the assessee, would be the amount computed in accordance with the provisions of the Act and not the full amount received from the paying company. Therefore, it is reasonable to assume that in enacting Section 80M the Legislature intended to grant relief with reference to the amount of dividend computed in accordance with the provisions of the Act and not with reference to the full amount of dividend received from the paying

company. The Legislature could certainly be attributed the intention to prevent double taxation but not to provide an additional benefit which would go beyond what is required for saving the amount of dividend from taxation once again the hands of the assessee. [799 A-E]

4. Section 80M sub-section (1) opens with the words "where the gross total income of an assessee...../ncludes 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% 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. The opening words describe the condition which must be fulfilled in order to attract the applicability of the provision contained in sub-section (1) of Section 80M. The condition is that the gross totol income of the assessee must include income by way of dividends from a domestic company "Gross total income" is defined in Seetion 80B clause (v) to mean "total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA or under Section 280D". Income by way of dividends from a domestic company included in the gross total income would therefore obviously be income computed in accordance with the provisions of the Act, that is after deducting interest on monies borrowed for earning such income. If income by way of dividends from a domestic company computed in accordance with the provisions of the Act is included in the gross total income, or in other words, form part of the gross total income,the conditions specified in the opening part of sub-section (1) of Section 80M would be fullfilled and the provision enacted in that sub-section would be attracted. [799G-800C]

5. The words "such income by way of dividends" must have reference 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. Consequently, in order to determine what is "such income by way of dividends", the question to be asked is what is the income by way of dividends from a domestic company included in the gross totol income and that would obviously be the income by way of dividends computed in accordance with the provisions of the Act. It is difficult to appreciate how, when interpreting the words "such income by way of dividends" a dichotomy can be made between the category of income and the quantum of the income by way of dividends so included. [800H-801C]

6. There is also another strong indication in the language of sub-section (1) of Section 80M which clearly compels taking the view that the deduction envisaged by that provision is required to be made with reference to the income by way of dividends computed in accordance with the provisions of the Act and not with referrence to the full amount of dividend received by the assessee. The indication was also unfortunately lost sight of by the Court in *Cloth Traders* case presumably because it was not brought to the attention of the Court. The Court observed in *Cloth Traders* case that the whole of the income by way of dividends from a domestic company or 60% of such income as the same may be, would be deductible from the gross total income for

striving at the total income of the assessee. This observation appears to have been made under some misapprehension, because what sub-section (1) of Section 80M required is that the deduction of the whole or a specified percentage must be made from "such income by way of dividends" and not from the gross total income. Now when in computing the total income of the assessee, a deduction has to be made from "such income by way of dividends" it is elementary that "such income by way of dividends" from which deduction has to be made must be part of gross total income. It is difficult to see how the language of this part of sub-section (1) of Section 80M can possibly fit in it if "such income by way of dividends" were interpreted to mean that full amount of dividend received by the assessee. The full amount of dividend received by the assessee would not be included in the gross total income, what would be included would only be the amount of dividend as computed in accordance with the provisions of the Act. If that be so it is difficult to appreciate how for the purpose of computing the total income from the gross total income any deduction should be required to be made from the full amount of the dividend. The deduction required to be made for computing the total income from the gross total income can only be from the amount of dividend computed in accordance with the provisions of the Act which would be forming part of the gross total income. Whatever might have been the interpretation placed on clause (iv) of sub-section (1) of Section 99 and Section 85A the correctness of which is not in issue, so far as sub-section ( ) of Section 80M is concerned, the deduction required to be allowed under that provision is liable to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with reference to the full amount of dividend received by the assessee. [801G-802F]

7. Structurally there is hardly any difference between Section 80E sub-section (1) and Section 80M sub-section (1) and the reasoning which appealed to the Court in the interpretation of sub-section (1) of Section 80E in *Cambay Electric Supply Industrial Company Ltd.* v. *C.I.T.* must apply equally in the interpretation of sub-section (1) of Section 80M. [803 B]

8. Ordinarily this Court would be reluctant to overturn a decision given by a Bench of this Court, because it is essential that there should be continuity and consistency in judicial decisions, and law should be certain and definite. It is almost as important that the law should be settled correctly. But there may be circumstances where public interest demands that the previous decision be reviewed and reconsidered. The doctrine of *stare decisis* should not deter the Court from overruling an earlier decision, if it is satisfied that such decision is manifestly wrong or proceeds upon a mistaken assumption in regard to the existence or continuance of a statutory provision or is contrary to another decision of theC ourt. [805G-806A]

9. There are over-riding considerations which compel reconsideration and review of the decision in *Cloth Traders* Case. In the first place, the decision in *Cloth Traders case* was rendered by this Court on 4th May, 1979 and immediately thereafter, with in afew months, Parliament introduced Section 80AA with retrospective effect from Ist April, 1968 with a view to over-riding the interpretation placed on Section 80M in *Cloth Traders* case. The decision

in *Cloth Traders* case did not therefore hold the field for a period of more than a few months and it could not be said that any assessee was misled into acting to its detriment on the basis of that decision. There was no decision of this Court in regard to the interpretation of sub-section (1) of Section 80M prior to the decision in *Cloth Traders* case and there was therefore no authoritative pronouncement of this Court on this question of interpretation on which an assessee could claim to rely for making its fiscal arrangements. Another circumstance which makes is necessary to reconsider and review the decision in *Cloth Traders* Case. is the decision in *Cambay Electric Supply Company* case. The decision in *Cloth Traders* case is inconsistent with that in *Cambay Electric Supply Company's* case Both cannot siand together. If one is correct, the other must logically be wrong and vice-versa. It is therefore necessary to resolve the conflict between these two decisions and harmonise the law and that necessiatates an inquiry into the correctness of the decision in *Cloth Traders* Case, and having considered and reviewed the decision in *Cloth Traders* case come to the conclusion that the decision in *Cloth Traders* Case is erroneous and must be over turned. [806C-807D]

(*Per A.N. Sen, J.* concurring)

The authority and jurisdiction of a larger Bench of this Court to over-ride and over-rule any decision of a smaller Bench cannot be questioned. However, a decision of this Court on any fiscal legislation involving the question of financial benefit and liability should not normally be interfered with and should be interfered with only in very rare cases. On the basis of the decision of this Court on any fiscal legislation and any matter involving financial arrangements and adjustments, parties are entitled to arrange their financial affairs and in fact they so arrange and adjust the financial affairs on the basis of the law laid down by this Court. Unsettling a position settled by the decision of this Court may lead to the confusion and result in financial instability, causing serious prejudice not only to the parties concerned but also to the economic growth of the country as a whole. [808 C-E]

2. If on interpretation of any provision of any fiscal legislation two views may be reasonably possible, a larger Bench of this Court may not interfere with a view taken by a smaller Bench by this Court mainly on the ground that the other view appears to the larger Bench to be the better view and may commend itself to the larger Bench. If, howeuer, a decision of the smallar Bench has necessarily to interfere with the decision, as this Court will not permit a wrong decision to operate as good law of the land. [808 F]

ORIGINAL JURISDICTION : Writ Petition No. 2043 of 1981.

Under Article 32 of the Constitution of India

K.H. Kaji and *M.N. Shroff* for the Petitioners.

K. Parasaran, Attorney General and *K.S. Gurumoorthy* for the Respondents.

A The following Judgments were delivered

BHAGWATI, J. This writ petition raises an interesting question of construction of Section 80 M of the Income Tax Act, 1961. This question would appear to be concluded in favour of the assessee by the decision of this Court in *Cloth Traders Limited* v. *Additional* B *Commissioner of Income Tax,* 118 ITR 243, but the correctness of the view taken in that case has been challenged in the present writ petition. Since the decision in Cloth Traders Case (supra) was given by a Bench of three Judges, it is obvious that its validity can be canvassed before this Bench which consists of five Judges. If this Bench too takes the same view in regard of the construction of C Section 80M as that taken in *Clath Traders* case (supra), it would become necessary to consider the question of constitutional validity of Section 80AA which was introduced in the Income Tax Act, 1961 by Section 12 of the Finance (No. 2) Act 1980 with a view to over-riding with retrospective effect the construction placed on Section D 80M by this in *Clath Traders* case (supra). If on the other hand, this Bench disagrees with the view taken in *Cloth Traders* case (supra) and hold that even before the introduction of Section 80AA, Section 80M, on a true interpretation of its language, meant exactly what Section 80AA now retrospectively declares it to mean, no question of constitutional validity of Section 80AA would arise since Section E 80AA would then be merely declaratory of the law as it always was and would not be imposing any new tax burden with retrospective effect. The first question that we must therefore consider is as to what is the true construction of Section 80M unaided by the subsequent legislative interpretation imposed upon it by the enactment of Section F 80AA : do we affirm the view taken in *Cloth Traders* case (supra) or do we dissent from it.

We have given our most anxious consideration to this question, particularly since one of us, namely, P.N. Bhagwati, J. was a party G to the decision in *Cloth Traders* case (supra). But having regard to various considerations to which we shall advert indetail when we examine the arguments advanced on behalf of the parties, we are compelled to reach the conclusion that *Cloth Traders* case must be regarded as wrongly decided. The view taken in that case in regard H to the construction of Section 80M must be held to be erroneous and it must be corrected. To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this we derive comfort and strength from the wise and inspiring words of

Justice Bronson in *Pierce* v. *Delameter A.M.Y.* at page 18: "a Judge ought to be wise enough to know that he is fallible therefore ever-ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead : and courageous enough to acknowledge his errors". A

We may begin our discussion by referring to the legislative history of the provision enacted in Section 80M but before we do so, a brief statement of facts may help to provide the back-drop against which the question of construction of Section 80M arises for consideration. Petitioner No. 1 was incorporated as a limited company on 10th November 1941 under the Baroda Companies Act, 1918 and at all material times it carried on business of an investment company. Petitioner No. 2 is a Director and shareholder of Petitioner No. 1. Throughout the material period with which we are concerned in this writ petition, Petitioner No. 1 received dividends on shares held by it in different domestic companies and paid interest on monies borrowed for the purpose of investment in such shares. In the course of its assessments for the assessment years 1970-71 upto 1980-81, Petitioner No. 1 claimed that the deduction permissible under Section 80M must be calculated with reference to the full amount of dividends received by Petitioner No. 1 from domestic companies and not with reference to the dividend income as computed in accordance with the provisions of the Income Tax Act, 1961. This claim was liable to succeed if the view taken in *Cloth Traders* case (supra) in regard to the construction of Section 80M was correct and some of the assessments of Petitioner No. 1 were actually completed on the basis that this claim was justified. The Revenue preferred appeals against such assessments and these appeals were pending at different stages at the time of filing of the present writ petition. The assessments for some of the assessment years were also pending before the Income tax Officer. So long as the decision in *Cloth Traders* case (supra) stood unaffected by any Constitutionally valid legislative amendment, Petitioner No. 1 was entitled to succeed in the appeals as well as in the original assessments which were pending consideration before different authorities. But with a view to overrinding the decision in *Cloth Traders* case (supra) with retrospective effect, Parliament enacted Section 80AA and since this section was deemed to have been introduced in the Income Tax Act, 1961 with effect from 1st April, 1968 and it provided that the deduction required to be allowed under Section 80M shall be computed not with reference to the gross amount of dividend received by the assessee from a B C D E F G H

A domestic Company but with reference to the dividend income as computed in accordance with the provisions of the Act, the claim of petitioner No. 1 for deduction on the basis of the full amount of dividend received by it from domestic companies was liable to be rejected and deduction could be allowed to petitioner no. 1 only with reference to the dividend income computed in accordance with the B provision of the Act. The introduction of Section 80AA thus had the effect of enhancing the tax liability of petitioner No. 1 and the petitioners accordingly filed the present writ petition challenging the constitutional validity of Section 80AA on the ground that it enhanced the tax burden of petition No. 1 with retrospective effect going C back for a period of almost 12 years and thus imposed unreasonable restriction on the right of petitioner No. 1 to carry on its business in breach of Article 19(1)(g) of the Constitution.

We may first set out the history of the legislation preceding the enactment of Section 80M, since considerable reliance was placed D on this history both in the decision in *Cloth Traders* case (supra) as also in the course of the arguments in the present writ petition. The earliest provision granting exemption from 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 E 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 dividends paid by any other company which has paid or will pay F 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 *C.I.T.* v. *Industrial Investment Trust* G *Co. Ltd.* (1968) 67 I.T.R. 437 and the question was whether the dividend income exempted from super tax 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, i.e. after deducting the expenses incurred in earning it. The High H 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. It may be noticed, and this aspect was emphasised by the Bombay High Court, that what was exempted from super tax under the notification was "so much of the income of any investment trust company as is derived from dividends paid by any other company" and there was no reference to 'total income' in the notification nor was any indication given in the notification that the income derived from dividends which was sought to be exempted from super tax was dividend income forming part of 'total income' and that is why the Bombay High Court came to the conclusion that the dividend income exempted under the notification was the entire income by way of dividend received by the assessee and not the dividend income as computed in accordance with the provisions of the Act.

A B C D

The High Court of Bombay in taking this view in *Industrial Investment Trust Company's* case was guided by the decision of this Court in *C.I.T.* v. *South Indian Bank* (1966) 59 I.T.R. 763. Since the decision in *South Indian Bank* case (supra) is the only decision of this Court respecting an allied provision prior to the decision in Cloth Traders case (supra), it is necessary to refer to it in some detail in order to see whether it really supports the conclusion reached in *Cloth Traders* case (supra). The question which arose in *South Indian Bank* case (supra) was in regard to the true interpretation of a notification issued by the Central Government under Section 60A of the Indian Income Tax Act, 1922. This notification was subsequent in point of time to the notification which came to be considered by the High Court of Bombay in the *Industrial Investment Trust Company's* case, but it came up for construction before this court earlier in *South Indian Bank* case (supra). This notification was in the following terms :

E F G

> "No income-tax shall be payable by an assessee on the interest received on the following income-tax free loans issued by the former Government of Tranvancore or by the former Government of Cochin, provided that such

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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 the purpose 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 the 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 (p. 766) :

"..... this notification does not refer to the provision 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 two conditions, namely, (i) that the interest is received within the territories of the State of Travancore-Cochin, and (ii) that it is not brought to any other part of the taxable territories. It includes the said exempted interest in the total 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 exemtion 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 unambigous. Though the point of time from which the exempiion works is when it is received within the territories of the State of Travancore-Cochin, what is exempted is the interest reeeivable. '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 will be noticed that the entire basis of the judgment of the Court was that the notification was a self-contained one and it gave exemption from income tax in respect of *interest receivable* on certain categories of income tax free loans, without any reference to 'total income, or to "the provisions of section 8 of the Income tax Act at all." That is why the judgment pointed out that there was no scope for controlling the provisions of the notification with reference to section 8 of the Income Tax Act and proceeded to hold that what was exempted from income tax under the notification was "interest receivable" that is, "the amount of interest calculated as per the terms of the securities" without deduction of the "amount spent in receiving the same". There was nothing in the notification to indicate that what was sought to be exempted was the amount of interest included in the 'total income'.

Thereafter a provision of a similar kind granting exemption from super tax in respect of certain specified categories of inter-corporate dividends was introduced as Section 56 in the Indian Income Tax 1922 by the Finance Act, 1953. It is however not necessary to make any detailed reference to this provision since there is no decided case which has considered this provision or expressed any opinion upon it.

When the Indian Income Tax Act 1922 was repealed and the Income Tax Act 1961 was enacted with effect from 1st April, 1962, section 99 sub-section (i) was introduced in the new Act exempting certain categories of income from super tax and one such category was that set out in clause (iv). Section 99 sub-section (1) clause (iv) read as follows :

> "99. (1) Super-tax shall not be 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."

This provision continued in force upto 1st March, 1965 subject to a minor inconsequential amendment made by the Finance Act 1964. Now this provision did not at any time come up for interpretation before this Court prior to the decision in *Cloth Traders* case but it

did came to be considered by some of the High Courts. The question in regard to the interpretation of this provision which arose before the High Court of Bombay in *C.I.T.* v. *New Great Insurance Company Ltd.* (1963) 90 I.T.R. 348 was 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 High Court of Bombay accepting the contention of the assessee held that on a plain reading of clause (iv) 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 Bombay 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 Hlgh Court of Bombay 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 Bombay High Court, were descriptive of the items of income a included in the computation of the total income and were not indicative of the quantum 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 meaing 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. It may be pointed out that the same view in regard to the construction of clause (iv) of sub-section (1) of Section 99 was taken by the Calcutta High Court in *C.I.T.* v.

Darbhanga Marketing Company Limited.(1) and this decision of the Calcutta High Court was noted with approval by the High Court of Bombay in *New Great Insurance Company's* case (supra). The same view was also taken by the Madras High Court in *C.I.T.* v. *Madras Motor and General Insurance Company*(2) and it was approved in a later decision of the same High Court in *Madras Auto Service* v. *I.T.O.*(3) It would thus be seen that, on a construction of clause (iv) of sub-section (1) of Section 99, 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 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'.

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This view taken by the three High Courts was strongly relied upon by the petitioners in support of the construction of Section 80M canvassed on their behalf and in fact the decision in *Cloth Traders* case (supra) sought to derive some strength from this view. But on further reflection we do not see how this view taken by the three High Courts in regard to the construction of clause (iv) of sub-section (1) of Section 99 can assist in the interpretation of an entirely new section, namely, Section 80M which, as we shall presently point out, is different in its structure, language and content from clause (iv) sub-section (1) of Section 99. We may point out that some doubt was raised on behalf of the Revenue in regard to the correctness of this view taken by the three High Courts but we do not think it necessary to consider whether this doubt is well founded or not because we are of the view that even if the construction placed on clause (iv) of sub-section (1) of Section 99 by the three High Courts were correct, it cannot necessarily lead to the conclusion that a similar construction must also be placed on Section 80M which is different in material respects from clause (iv) of sub-section (1) of Section 99. It is most unsafe to try to arrive at the true meaning of a statutory provision by reference to an interpretation which might have been placed on an earlier statutory provision which is not only couched in different language but is also structurally different We must therefore construe the language of Section 80M on its own terms uninhibited by any interpretation which may have been placed on clause (iv) of sub-section (1) of Section 99 by any High Court.

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(1) [1971] 80 I.T.R. 72.
(2) [1975] 99 I.T.R. 243.
(3) [1975] 101 I.T.R. 589.

A We may, proceeding further with the narration of the history of the legislation, point out that Section 99 sub-section (1) remained in force only upto the close of the assessment year 1964-65 and by an amendment made by the Finance Act No. 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, B Chapter VI A comprised Section 80A to 80D providing for certain specified deductions to be made in computing total income, while Section 85 A in so far as material provided as follows :

> C "85A. Deduction of tax on intercorporate 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 D 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 E of twenty five per cent thereof... . ....."

This section too came to be considered by the Bombay High Court in *New Great Insurance Company's* case (supra) because two of F 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 difference being that the exemption granted under G Section 99 sub-section (1) clause (iv) was in regard 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 wuld be entitled H to deduction 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 compay. 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 recpect of dividend income minus deductions allowable under the provisions of the Act in computing 'total income'.

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But here again we are not concerned to inquire whether the view taken by the Bombay High Court in *New Great Insurance Company's* case (Supra) is correct, though it must be conceded that it has been held to be correct in the decision in *Cloth Traders* Case (Supra). We do feel, however, that another view in regard to the interpretation of Section 85A is possible. It is not at all unreasonable to construe the words "income so included" as meaning the quantum of income by way of dividends included in the total income of the assessee. These words in the context in which they occur have obviously reference to quantum of the income by way of dividends to which the average rate of income tax is to be applied. That quantum is defined by these words and in order to determine it, we have to ask the question : what is the income by way of dividends included in the total income and the answer can only be that it is income computed in accordance with the provisions of the Act. But, as we have pointed out above, it is not necessary to consider whether the construction placed on Section 85A by the Bombay High Court in *New Great Insurance Company's* case (supra) is correct or not, because we are not concerned here with the interpretation of Section 85A. It is Section 80M which has to be construed and this Section as we shall presently show, is materially different from Section 85A. We cannot construe Section 80M in the light of the interpretation placed on its predecessor section by the Bombay High Court particularly when Section 80M is admittedly worded differently from its predecessor section. We must construe Section 80M on its own and arrive at its true interpretation according to the plain natural language meaning of the words used by the legislature.

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It seems that the spate of changes in this legislative provision did not come to an end with the enactment of Section 85A. The original Chapter VI A and certain other section including Section 85 A were deleted from the present Act by the Finance (No. 2) Act, 1967, with effect from 1st April 1968, and replaced by a new Chapter VI A which contains a fasciculus of sections from Section 80A to 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 deductions 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 (v) of Section 80B to mean the total income computed in accrdance with the provisions of the Act before making any deductions under Chapter VI A or under Section 280 D. 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 under-gone changes from time to time since the date of its enactment and we will therefore reproduce it in the form in which it stood when originally enacted :

> "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 this 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 respeet of such income by was of dividends received by it from an Indian company which is not such a company as is referred to in Section 108 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) A

65% of such income;

(b) where the assessee is a domestic company—

in respect of any such income by way of dividends B

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 the 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 so that right from the date of its enactment, Section 80M sub-section (1) was to be read as if the words "received by it" were not in the opening part of that provision. C D

Soon after the enactment of Section 80M a question arose before the Gujarat High Court in *Addl. C. I. T.* v. *Cloth Traders Private Limited*(1) whether on a true construction of that Section, the permissible deduction is to be calculated with reference to the full amount of dividends received by the assessee from a domestic company or with reference to the dividend income computed in accordance with the provisions of the Act, that is, after deducting the interest paid on monies borrowed for earning such income. The Gujarat High Court in a Judgment delivered on 28th November 1973, held that the deduction permissible under Section 80M is liable to be calculated with reference to the dividend income computed in accordance with the provisions of the Act and not with reference to the full amount of dividends received by the assessee. The assessee being aggrieved by this judgment preferred an appeal to this Court and this appeal was allowed by the judgment delivered in *Cloth Traders* Case (supra). This Court over-ruled the view taken by the Gujarat High Court and held that the deduction required to be allowed under Section 80M must be calculated "with reference to the full amount of dividends received from a domestic comany and E F G H

(1) [1974] 97 I.T.R. 140.

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 decision was given by the Court on 4th May 1979.

Now, according to Parliament, this interpretation placed on Section 80M by the summit court was not in conformity with the legislative intent and it resulted in considerable unjustified loss of revenue. Parliament therefore immediately proceeded to set right what, according to it was an interpretation contrary to the legislative intent and with a view to setting at naught such interpretation. Parliament, by Section 12 of Finance (No. 2) Act 1980, introduced in the Income Tax Act, 1961, Section 80AA with retrospective effect from 1st April 1968, that is the date when Section 80M was originally enacted, providing that the deduction required to be allowed under Section 80M in respect of intercorporate dividends "shall be computed with reference to the income by way of such dividends as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) and not with reference to the gross amount of such dividends ". It is the validity of this new Section 80AA which is challenged in the present writ petition. But we may make it clear that what is challenged is not the prospective operation of Section 80AA. That would clearly be unexceptionable because the Legislature can always impose a new tax burden or enhance an existing tax liability with prospective effect. But the complaint of the assessee was against retrospective effect being given to Section 80AA, because that would have the effect of enhancing the tax burden on the assessee by setting at naught the interpretation placed on Section 80M by the decision in *Cloth Traders* case and reducing the amount of deduction required to be allowed under Section 80M. However, as pointed out at the commencement of this judgment, it would become necessary to examine this compaint against the constitutional validity of retrospective operation of Section 80AA only if we affirm the interpretation placed on Section 80M by the decision of this Court in *Clath Traders* case. If we do not agree with the decision of this Court in *Cloth Traders* case (supra) and take the view that the Gujarat High Court was right in the interpretation placed by it on Section 80M in *Addl. C. I. T.* v. *Cloth Traders Private Limited* no question of constitutional validity of the retrospective operation of Section 80AA would remain to be considered, because in that event Section 80AA in its retrospective operation would be merely clarificatory in nature and would not involve imposition of any new tax burden.

We may therefore first examine the language of Section 80M for arriving at its true interpretation. But before we do so, let us consider what is the object behind grant of relief under Section 80M. It was common ground between the parties that the main object of the relief under Section 80M is to avoid taxation once again in the hands of the receiving company of the amount which has already borne full tax in the hands of the paying company. Vide the written submission under the heading "Object of relief on intercorporate dividends" filed by the learned counsel on behalf of the assessee in the course of the arguments. Now when an amount by way of dividend is received by the assessee from the paying company, the full amount of such dividend would have suffered tax in the assessment of the paying company and it is obvious, that, in order to encourage inter-company investments, the Legislature intended that this amount should not bear tax once again in the hands of the assessee either its entirety or to a specified extent. But the amount by way of dividend which would other-wise suffer tax in the hands of the asseesee, would be the amount computed in accordance with the provisions of the Act and not the full amount received from the paying company. Therefore it is reasonable to assume that in enacting Section 80M the Legislature intended to grant relief with reference to the amount of dividend computed in accordance with the provisions of the Act and not with reference to the full amount of dividend received from the paying company. It is difficult to imagine any reason why the Legislature should have intended to give relief with reference to the full amount of dividend received from the paying company when that is not the amount with is liable to suffer tax once again in the hands of the assessee. The Legislature could certainly be attributed the intention to prevent double taxation but not to provide an additional benefit which would go beyond what is required for saving the amount of dividend from taxation once again in the hands of the assessee. Bearing in mind these prefatory observations in regard to the legislative object, we may now proceed to construe the language of Section 80M.

Section 80M 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% 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. The opening words describe the condition which must be fulfilled in order to attract the applicability of the provision contained in sub-section (1) of Seetion 80M. The condition is that the gross total income of the assessee must include income by way of dividends from a domestic company. "Gross total income" is defined in Section 80B clause (v) to mean "total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA or under Section 280D." Income by way of dividends from a domestic company included in the gross total income would therefore obviously be income computed in accordance with the provisions of the Act, that is, after deducting interest on monies borowed for earning such income. If income by way of dividends from a domestic company computed in accordance with the provisions of the Act in included in the gross total income, or in other words, forms part of the gross total income, the condition specified in the opening part of sub-section (1) of section 80M would be fulfilled and the provision enacted in that sub-section would be attracted.

Now it was urged on behalf of the assessee that the words "Where the gross total income of an assessee .... includes any income by way of dividends from a domestic company" in thc opening part of sub-section (1) of Section 80M refer only to the inclusion of the category of income and not to the quantum of such income and therefore the words "such income by way of dividends" following upon the specification of this condition, cannot have reference to the quantum of the income included but must be held referable only to category of the income included, that is, income by way of dividends from a domestic company. This was the same argument which found favour with the Court in *Cloth Traders* case (supra), but on fuller consideration, we do not think it is well founded. We may assume with the Court in *Cloth Traders* case that 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 gross, total income, irrespective of what is the of quantum income so included but it is difficult to see how the factor of quantum can altogether be excluded when we talk of any category of income included in the gross total income. What is included in the gross total incomc in such a case is a particular quantum of income belonging to the specified category. Therefore the words "such income by way of dividends" must be referable not only to the cate-

gory of income included in the gross total income but also to the quantum of the income so included. It is obvious, as a matter of plain grammer. that the words "such income by way of dividends" must have reference 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. Consequently, in order to determine what is "such income by way of dividends", we have to ask the question : what is the income by way of dividends from a domestic company included in the gross total income and that would obviously be the income by way of dividends computed in accordance with the provisions of the Act. It is difficult to appreciate how, when we are interpreting the words "such income by way of dividends", we can make a dichotomy between the category of income by way of dividends included in the gross total income and the quantum of the income by way of dividends so included. This Court observed in *Cloth Traders* case that the words "such income by way of dividends" as a matter of plain grammer 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, but there is a clear fallacy in this observation, because in making the substitution it stop short with the words "income by way of dividends from a domestic company" and does not go the full length to which plain grammer must dictate us to go, namely, "income be way of dividends from a domestic company *included in the gross total income*" (emphasis supplied). Otherwise we would not be giving to the word *'such'* its full meaning and effect. The word *'such'* in the context in which it occurs can only mean that income by way of dividends from a domestic company which is included in the gross total income and that must necessarily be income by way of dividends computed in accordance with the provisions of the Act.

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There is also one other strong indication in the language of sub-section (1) of Section 80M which clearly compels us to take the view that the deduction envisaged by that provision is required to be made with reference to the income by way of dividends computed in accordance with the provisions of the Act and not with reference to the full amount of dividend received by the assessee. This indication was also unfortunately lost sight of by the Court in *Cloth Traders* case presumably because it was not brought to the attention of the Court. The Court observed in *Cloth Traders* case that the whole of the income by way of dividends from a domestic company or 60% of such income as the case may be, would be deductible from the gross

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total income for arriving at the total income of the assessee. We are afraid this observation appears to have been made under some mis-apprehension, because what sub-section (1) of Section 80M requires is that the deduction of the whole or a specified percentage must be made from "such income by way of dividends" and not from the gross total income. Sub-section (1) of Section 80M provides that in computing the total income of the assessee there shall be allowed a deduction from "such income by way of dividends" of an amount equal to the whole or a specified percentage of such income. Now when in computing the total income of the assessee, a deduction has to be made from "such income by way of dividends", it is elementary that "such income by way of dividends" from which deduction has to be made must be part of gross total income. It is difficult to see how the language of this part of sub-section (1) of Section 80M can possibly fit in if "such income by way of dividends" were interpreted to mean the full amount of dividend received by the assessee. The full amount of dividend received by the assessee would not be included in the gross total income : what would be included would only be the amount of dividend as computed in accordance with the provisions of the Act. If that be so it is difficult to appreciate how for the purpose of computing the the total income from the gross total income any deduction should be required to be made from the full amount of the dividend. The deduction required to be made for computing the total income from the gross total income can only be from the amount of dividend computed in accordance with the provisions of the Act which would be forming part of the gross total income. It is therefore clear that whatever might have been the interpretation placed on clause (iv) of sub-section (1) of Section 99 and Section 85A, the correctness of which is not in issue before us, so far as sub-section (1) of Section 80M is concerned, the deduction required to be allowed under that provision is liable to be calculated with reference to the amonnt of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with reference to the full amount of dividend received by the assessee.

This view which we are taking in regard to the construction of sub-section (1) of Section 80M is also supported by the decision of a Bench of this Court consisting of one of us, Chandrachud, C.J. and Tulzapurkar, J. in *Cambay Electric Supply Industrial Company Limited* v. *C.I.T.*(1) This decision was rendered by the Court on

(1) [1978] 113 I.T.R. 84

11th April 1978 at least a year before the decision in *Cloth Traders* case, but, unfortunately, it appears, it was not brought to the attention of the Court when the *Cloth Traders* case was argued, because we have no doubt that if it had been cited, the Court would have certainly made a reference to it in the judgment in *Cloth Traders* case. The Section which came up for consideration before the Court in *Cambay Electric Supply Company's* case was undoubtedly a different one, namely, Section 80E, but the reasoning which prevailed with the Court in placing a particular interpretation on sub-section (1) of Section 80E would equally to applicable in the interpretation of sub-section (1) of Section 80M. Section 80E as it stood at the material time provided *inter alia* as follows in sub-section (1) :

> "80E(1). Deduction in respect of profits and gains from specified industries in the case of certain companies. —(1) In the case of a company to which this section applies, where the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule, there shall be allowed a deduction from such profits and gains of an amount equal to eight per cent thereof, in computing the total income of the company."

The question which arose in *Cambay Electric Supply Company's* case was whether unabsorbed depreciation and unabsorbed development rebate were liable to be deducted in arriving at the figure of profits and gains exigible to deduction of 8 per cent contemplated in sub-section (1) of Section 80E. The argument of the assessee was precisely the same as the one advanced in the present case, namely, that the words "such profits and gains" in the later part of sub-section (1) of Section 80E were intended to refer only to the category of profits and gains referred to in the earlier part of that provision, namely, "profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule" and not to the quantum of the profits and gains included in the total income, so

that the profits and gains exigible to the deduction of 8 per cent were the profits and gains attributable to the specified business in their entirety and not the profits and gains as computed in accordance with the provisions of the Act. The assessee contended that, in the circumstances, unabsorbed depreciation and unabsorbed development rebate were not liable to be deducted from the profits and gains attributable to the specified business for arriving at the figure exigible to the deduction of 8%. This argument of the assessee was rejected by the Court and the Court held that the profits and gains exigible to the deduction of 8 per cent were profits and gains computed in accordance with the provisions of the Act and *forming part of the total income* and hence unabsorbed depreciation and unabsorbad development rebate were liable to be excluded from the profits and gains attributable to the specified business in arriving at the figure exigible to 8 per cent deduction. Tulzapurkar, J. speaking on behalf of the Court analysed the provisions of sub-section (1) of Section 80E in the following words :

> "On reading sub-section (1) it will become clear that three important steps are required to be taken before the special deduction permissible thereunder is allowed and the net total income exigible to tax is determined. First, compute the total income of the concerned assessse in accordance with the other provisions of the Act, i e., in accordance with all the provisions except section 80E; secondly, ascerta what part of the total income so computed represess the profits and gains attributable to the business of the specified industry (here generation and distribution of electricity); and, thirdly, if there be profits and gains so attributable, deduct 8 per cent thereof from such profits and gains and then arrive at the net total income exigible to tax."

The learned Judge then proceeded to apply this interpretation of sub-section (1) of Section 80E to the facts of the case before him and observed :

> "As indicated earlier, sub-section (1) contemplates three steps being taken for computing the special deduction permissible thereunder and arriving at the net income exigilbe to tax find the first two steps read together contain the legislative mandate as to how the total income —of which the profits and gains attributable to the busi-

ness of the specified industry forms a part—of the concerned assessee is to be computed and according to the parenthetical clause, which contains the key words, the same is to be computed in accordance with the provisions of the Act except section 80E and since in this case it is income from business the same will have to be computed in accordance with sections 30 to 43A which would include section 32(2) (which provides for carry forward of depreciation) and section 33(2) (which provides for carry forward of development rebate for eight years). In other words, in computing the total income of the concerned assessee, items of unabsorbed depreciation and unabsorbed development rebate will have to be deducted before arriving at the figure that will become exigible to the deduction of 8 per cent contemplated by Section 80E (1)."

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It will thus be seen that according to this decision, the words "such profits and gains" in the later part of sub-section(1) of Section 80E were referable to the quantum of the profits and gains attributable to the specified business *included in the total income* as referred to in the earlier part of the provision. If this decision lays down the correct interpretation of sub-section (1) of Section 80E the same interpretation must also govern the language of sub-section (1) of Section 80M. Structurally there is hardly any difference between Section 80E sub-section (1) and Section 80M sub-section (1) and the reasoning which appealed to the Court in the interpretation of sub-section (1) of Section 80E must apply equally in the interpretation of sub-section (1) of Section 80M. We find ourselves wholly in agreement with the view taken by the Court in *Cambay Eleetric Supply Company's* case and we must therefore dissent from the interpretation placed on sub-section (1) of Section 80M by the decision in *Cloth Traders* case (supra).

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But, even if in our view the decision in *Cloth Traders* case is erroneous, the question still remains whether we should over-turn it. Ordinarily we would be reluctant to over-turn a decision given by a Bench of this Court, because it is essential that there should be continuity and consistency in judicial decisions and law should be certain and definite. It is almost as important that the law should be settled permanently as that it should be settled correctly. But there may be circumstances where public interest demands that the previous decision be reviewed and reconsidered. The doctrine of stare

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decisis should not deter the Court from over-ruling an earlier decision, if it is satisfied that such decision is manifestly wrong or proceeds upon a mistaken assumption in regard to the existence or continuance of a statutory provision or is contrary to another decision of the Court. It was Jackson, J. who said in his dissenting opinion in *Massachusetts* v. *United States*(1) : "I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday". Lord Denning also said to the same effect when he observed in *Ostime* v. *Australian Mutual Provident Society*(2) : "The doctrine of precedent does not compel Your Lordships to follow the wrong path until you fall over the edge of the cliff". Here we find that there are over-riding considerations which compel us to reconsider and review the decision in *Cloth Traders* case. In the first place, the decision in *Cloth Traders* case was rendered by this Court on 4th May 1979 and immediately thereafter, within a few months, Parliament introduced Section 80AA with retrospective effect from 1st April 1968 with a view to over-riding the interprepretation placed on Section 80M in *Cloth Traders* case. The decision in *Cloth Traders* case did not therefore hold the field for a period of more than a few months and it could not be said that any assessee was misled into acting to its detriment on the basis of that decision. There was no decision in regard to the interpretation of sub-section (1) of Section 80M given by any High Court prior to the decision in *Cloth Traders* case and there was therefore no authoritative pronouncement of this Court on this question of interpretation on which an assessee could claim to rely for making its fiscal arrangements. The only decision in regard to the interpretation of sub-section (1) of Section 80M given by any High Court prior to the decision in *Cloth Traders* case, was that of the Gujarat High Court in *Addi. C.I.T.* v. *Cloth Traders Private Limited* and that decision took precisely the same view which we are inclined to accept in the present case. It is therefore difficult to see how any assessee can legitimately complain that any hardship or inconvenience would be caused to it if the decision in *Cloth Traders* case was over-turned by us. If despite the decision of the Gujarat High Court in *Addl. C.I.T.* v. *Cloth Traders Private Limited* (supra) the assessee proceeded on the assumption, now found to be erroneous, that the Gujarat High Court decision was wrong and the deduction permissible under sub-section (1) of Section 80M was liable to be calculated with reference to the full amount of dividend

(1) 333 U.S. 611
(2) [1963] A.C. 459

received by the assessee, the assessee can have only itself to blame. Knowing fully well that the Gujarat High Court had decided the question of interpretation of sub-section (1) of Section 80M in favour of the Revenue and there was no decision of this Court taking a different view, no prudent assessee could have proceeded to make its financial arrangements on the basis that the decision of the Gujarat High Court was erroneous. Moreover, we find, for reason we have already discussed that the decision in *Cloth Traders* case is manifestly wrong because it has failed to take into account a very vital factor, namely, that the deduction required to be made under sub-section (1) of Section 80M is not from the gross total income but from "such income by way of dividends". There is also another circumstance which makes it necessary for us to reconsider and review the decision in *Cloth Traders* case and that is the decision in *Cambay Electric Supply Company's* case. The decision in *Clath Traders* case is inconsistent with that in *Cambay Electric Supply Company's* case. Both cannot stand together. If one is correct, the other must logically be wrong and *vice versa*. It is therefore necessary to resolve the conflict between these two decisions and harmonise the law and that necessasitates an inquiry into the correctness of the decision in *Cloth Traders* case. It is for this reason that we have reconsidered and reviewed the decision in *Cloth Traders* case and on such reconsideration and review, we have come to the conclusion that the decision in *Cloth Traders* case in erroneous and must be over-turned.

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It is obvious that, on this view, it becomes unnecessary to consider the question of constitutional validity of the retrospective operation of Section 80AA. Section 80AA in its retrospective operation is merely declaratory of the law as it always was since 1st April 1968 and no complaint can validly be made against it.

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We accordingly dismiss the writ petition but, in the peculiar circumstances of the case, we direct that each party shall bear and pay its own costs.

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AMARENDRA NATH SEN, J. I have had the benefit of reading the judgment of my learned brother Bhagwati, J. My learned brother in his judgment has set out all the material facts and circumstances of the case. He has referred to the relevant statutory provisions and to the legislative history of Section 80M of the Income-Tax Act. He has also considered the earlier decisions of various Courts including

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A the decisions of this Court in *Cloth Traders Ltd.* v. *Additional Commissioner of Income Tax*(1) and in *Cambay Electrical Supply Industrial Co. Ltd.* v. *Commissioner of Income-Tax*.(2) He has analysed the provisions of Section 80M and has proceeded to interpret the same. As I am in broad agreement with what have been stated by my learned brother, I do not propose to reproduce the same.
B I, however, wish to make some observations of my own.

The authority and jurisdiction of a larger Bench of this Court to over-ride and over-rule any decision of a smaller Bench cannot be questioned. I am, however, of the opinion that the decision of this
C Court on any fiscal legislation involving the question of financial benefit and liability should not normally be interfered with and should be interfered with only in very rare cases. On the basis of the decision of this Court on any fiscal legislation and any matter involving financial arrangements and adjustments, parties are entitled to arrange their financial affairs and in fact they so arrange and
D adjust their financial affairs on the basis of the law laid down by this Court. Unsettling a position settled by the decision of this Court may lead to confusion and result in financial instability, causing serious prejudice not only to the parties concerned but also to the economic growth of the country as a whole. If on interpretation of
E any provision in any fiscal legislation two views may be reasonably possible, a larger Bench of this Court may not interfere with the view taken by a smaller Bench of this Court merely on the ground that the other view appears to the larger Bench to be the better view and may commend itself to the larger Bench. If, however, the decision of the smaller Bench is erroneous, the larger Bench has necessarily to
F interfere with the decision, as this Court will not permit a wrong decision to operate as good law of the land.

On a careful consideration of all the relevant facts and circumstances of this case and the earlier decisions which have
G all been noted in the judgment of my learned brother, I have no hesitation in coming to the conclusion that the decision arrived at by my learned brother for the reasons stated by him in his judgment is sound and correct. My learned brother has properly analysed the provisions of Section 80M and has correctly construed
H the same, applying the well settled principles of construction. I agree

(1) 118 I.T.R. 243.
(2) [1970] 113 I.T.R. 84.

with my learned brother and the reasons given by him for coming to the conclusion that the decision of this Court *Cloth Traders Ltd.* v. *Additional Commissioner of Income Tax* is erroneous. In my opinion, it cannot be said that in deciding the case of *Cloth Traders Ltd.* this Court had taken one of two reasonably possible views. As my learned brother in his judgment has aptly pointed out on a proper interpretation of Section 80M that the view taken by this Court in *Cloth Traders* case is fallacious and wrong. I am in entire agreement with the interpretation of Section 80M made by my learned brother for reasons stated in his judgment.

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It may be noted that as soon as the decision of this Court in *Cloth Traders* case was given, the Parliament to clearly manifest the legislative intent and to indicate that the decision did not reflect the true intention of the Legislature introduced by amendment Section 80AA with retrospective effect. In view of the proper interpretation of Section 80M in the judgment of my learned brother with which I agree, it cannot be said that Section 80AA has the effect of imposing any fresh tax with retrospective effect. Section 80AA is clearly declaratory in nature and merely declares what the correct position has always been. No question of imposition of any fresh tax with retrospective effect falls for consideration in this case. It may also be pointed out that the decision in *Cloth Traders* case cannot be said to have held the field for any lenght of time to cause any serious prejudice to an assessee. The decision of the Gujarat High Court in *Cloth Traders* case which was upset by this Court was against the assessee and the Parliament had intervened as soon as this Court reversed the decision of the Gujarat High Court in *Cloth Traders* case. This aspect has also been fully dealt with in the judgment of my learned brother.

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With these observations I am in entire agreement with the judgment of my learned brother and I agree with the order proposed by him.

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N.V.K. *Petition dismissed.*