

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.515/Chny/2018**
(निर्धारण वर्ष / **Assessment Year: 1992-1993**)

M/s. Indbank Merchant Banking Services Ltd. 1 st Floor, Khivraj Complex, No.480 Anna Salai, Nandanam Chennai – 600 035.	बनाम/ Vs.	DCIT Corporate Circle-2(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAACI-2107-B		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri M. Sanjeev Aditya (CA)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajith Kumar (Addl.CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	25-01-2022
घोषणा की तारीख / Date of Pronouncement	:	31-01-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 1992-93 arises out of the order of learned Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)] dated 30.11.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 260A of the Act on 31.03.2015. Though the assessee has raised multiple grounds of appeal, however, the only grievance of the assessee is

computation of deduction u/s 80M. The provisions of Section 80M (as existed in that year) provide that where gross total income of a domestic company (recipient) includes any income by way of dividends from another domestic company then the recipient shall be allowed a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the recipient company.

2. Having heard rival submissions and after going through relevant material on record including the orders of lower authorities, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in providing financial services and merchant banking services.

3.1 The brief facts are the assessee was assessed u/s 143(3) on 24.02.1995. The assessee claimed deduction u/s 80M for Rs.152.39 Lacs and the same was allowed. However, this order was subjected to revision u/s 263 on 28.02.1997 and another order was passed u/s 143(3) r.w.s. 263 on 28.01.1998. In the revisional order, Ld. AO was directed to allow deduction u/s 80M for Rs.14,06,350/-. These directions were followed by Ld. AO in in order dated 28.01.1998. The Ld.CIT(A) upheld the order of Ld. AO. However, Tribunal in ITA No.420/Mds/98 dated 14.07.2004 directed Ld. AO to take 5% of gross dividend income as expenditure and recompute deduction u/s 80M. Upon revenue's further appeal, Hon'ble High Court of Madras in TCA No.1097 of 2004 dated 13.07.2011 remitted the matter back to the file of Ld. AO after taking into account total expenditure and funds used for those expenses as incurred by the assessee to earn the dividend income.

3.2 In the set-aside proceedings, it was noted by Ld. AO that the assessee earned dividend income of Rs.160.64 Lacs and claimed deduction of Rs.152.39 Lacs u/s 80M i.e. to the extent of dividend paid by the assessee. Upon perusal of assessee's financials, it was observed that there was increase in investments as well as loans taken by the assessee during the year and therefore, loans were utilized for making investments. The assessee incurred finance expenses of Rs.8141.73 Lacs and administrative and personnel expenses for Rs.480.76 Lacs. Since paid-up capital increased only by Rs.10 Crores whereas the investments increased by Rs.97.24 Crores, entire own capital could not be said to have been invested in units and shares yielding dividend income for which the assessee claimed deduction u/s 80M. The onus was on assessee to establish direct nexus between own funds and investments made by the assessee. The assessee submitted that it commenced business activities during calendar year 1989. In that year, the assessee did not accept any deposits from the public and capital and reserves at year-end amounted to Rs.600 Lacs which could be considered to have been utilized to make investments.

3.3 Regarding investment in Units of Unit Trust of India from which substantial dividend was earned, it was submitted that investment was made in 2 tranches i.e., Rs.564.60 Lacs on 28.01.1991 and another Rs.593.81 Lacs on 02.05.1991. Since the assessee had own funds of Rs.600 Lacs as on 31.03.1990, it could be presumed that investment made on 28.01.1991 was out of own funds.

3.4 However, Ld. AO held an opinion that the deduction shall be computed with reference to the income by way of such dividend as computed in accordance with the provisions of the act and not with

reference to gross amount of such dividend. The proportionate management expenses incurred by the assessee were to be deducted from gross dividend for the purpose of computing deduction u/s 80M. The same was computed as under.

3.5 It was noted by Ld. AO that the dividend income constituted 1.7% of total earnings of the assessee and 1.7% of finance & administrative expenses would be Rs. 146.58 Lacs. Deducting the same from dividend income of Rs.160.64 Lacs, the actual dividend would come to be Rs.14.06 Lacs which would be eligible for deduction u/s 80M.

4. During appellate proceedings, the assessee reiterated that the investment of Rs.564.60 Lacs made on 28.01.1991 was funded out of share capital and reserves of Rs.600 Lacs as on 31/03/1990. The investment of Rs.593.81 Lacs made on 02.05.1991 was funded out of cash accumulations during the period 01.04.1991 to 30.06.1991. The balance investment of Rs.267 Lacs could alone be considered to have been made out of borrowed funds. Taking 7% as cost of Rs.267 Lacs, proportionate interest may be disallowed and the balance dividend income may be exempted u/s 80M.

5. However, Ld. CIT(A) opined that in case of mixed funds, it could not be taken that the investments were out of interest free funds. The assessee was not able to link the share capital and reserves available with the investment. In such a case, the only course available would be to disallow proportionate expenditure. Therefore, the course adopted by Ld. AO was reasonable. Accordingly, the working was upheld against which the assessee is in further appeal before us.

6. After careful consideration of factual matrix as enumerated in the preceding paragraphs, the undisputed facts that emerges are that the

assessee had own funds by way of share capital and reserves as on 31.03.1990 for Rs.600 Lacs. Therefore, the investments made on 28.01.1991 for Rs.564.60 Lacs would bear direct nexus with the same. As on 31.03.1991, the assessee had share capital and reserves of more than Rs.636.35 Lacs which have been invested in fixed assets and others and therefore, the same could not have been used for the purpose of making investment. However, the assessee had cash accumulations during first quarter of 1991 for Rs.328.60 Lacs and therefore the investment made on 02.05.1991, to that extent, may be presumed to be made out of cash accumulations. The total investments made by the assessee stood at Rs.1311.28 Lacs. Hence, the balance Rs.418.08 Lacs of investment alone could be considered to be sourced out of borrowed funds. The Ld. AR, in the written submissions, has stated that average cost of borrowing was 14% and considering the profits earned, 50% of cost of funds may be considered as proportionate to earning of income from dividend out of borrowed funds. Accordingly, 7% of Rs.418.08 Lacs may be considered as proportionate interest expenditure which would roughly translate into Rs.29.26 Lacs of proportionate interest expenditure. We find these submissions to be reasonable and acceptable and therefore, we direct Ld. AO to compute exact disallowance and restrict the interest disallowance to that extent. No disallowance of management expenses shall be made. No other material arguments have been adduced during hearing before us.

7. The appeal stands partly allowed in terms of our above order.

Order pronounced on 31st January, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखकसदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 31-01-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF