Distributors (Baroda) Pvt. Ltd.

Vs

Union of India and Others

Writ Petition No. 2043 of 1981

(CJI Y. V. chandrachud, M. P. Thakkar, P. N. Bhagwati, A. N. Sen, D. P. Madon JJ)

01.07.1985

JUDGMENT

BHAGWATI, J. - (for Chandrachud, C.J. and himself, Madon and Thakkar, JJ.)

1. The 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 (P) Ltd. v. Addl. CIT ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246), 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 Section 80-M as that taken in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246), it would become necessary to consider the question of constitutional validity of Section 80-AA which was introduced in the Income Tax Act, 1961 by Section 12 of the Finance (No. 2) Act, 1980 with a view to overriding with retrospective effect the construction placed on Section 80-M by this Court in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). If on the other hand, this Bench disagrees with the view taken in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) and holds that even before the introduction of Section 80-AA, Section 80-M, on a true interpretation of its language, meant exactly what Section 80-AA now retrospectively declares it to mean, no question of constitutional validity of Section 80-AA would arise since Section 80-AA 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 80-M unaided by the subsequent legislative interpretation imposed upon it by the enactment of Section 80-AA : do we affirm the view taken in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) or do we dissent from it.

2. We have given our most anxious consideration to this question, particularly since one of us, namely, P.N. Bhagwati, J. was a party to the decision in Cloth Traders Case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). But having regard to various considerations to which we shall advert in detail when we examine the arguments advanced on behalf of the parties, we are compelled to reach the conclusion that Cloth Trader case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) must be regarded as wrongly decided. The view taken in that case in regard to the construction of Section 80-M 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 and

therefore everready 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".

3. We may begin our discussion by referring to the legislative history of the provision enacted in Section 80-M but before we do so, a brief statement of facts may help to provide the backdrop against which the question of construction of Section 80-M arises for consideration. Petitioner 1 was incorporated as a limited company on November 10, 1941 under the Baroda Companies Act, 1918 and at all material times it carried on business of an investment company. Petitioner 2 is a Director and shareholder of petitioner 1. Throughout the material period with which we are concerned in this writ petition, petitioner 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 up to 1980-81, petitioner 1 claimed that the deduction permissible under Section 80-M must be calculated with reference to the full amount of dividends received by petitioner 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) in regard to the construction of Section 80-M was correct and some of the assessments of petitioner 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 Trader case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) stood unaffected by any constitutionally valid legislative amendment, petitioner 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 overriding the decision in Cloth Trader case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) with retrospective effect, Parliament enacted Section 80-AA and since this section was deemed to have been introduced in the Income Tax Act, 1961 with effect from April 1, 1968 and it provided that the deduction required to be allowed under Section 80-M 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 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 1 only with reference to the dividend income computed in accordance with the provision of the Act. The introduction of Section 80-AA thus had the effect of enhancing the tax liability of petitioner 1 and the petitioners accordingly filed the present writ petition challenging the constitutional validity of Section 80-AA on the ground that it enhanced the tax burden of petition 1 with retrospective effect going back for a period of almost 12 years and thus imposed unreasonable restriction on the right of petitioner 1 to carry on its business in breach of Article 19(1)(g) of the Constitution.

4. We may first set out the history of the legislation preceding the enactment of Section 80-M, since considerable reliance was placed on this history both in the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) as also in the course of the arguments in the present writ petition. The earliest provision granting exemption from super-tax in respect in inter-corporate dividends was made as far back as December 9, 1933 in a notification issued by the Governor-General in Council and it provided as follows :

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

> (i) so much of the income of any investment trust company as is derived from dividends paid by any other company which has paid or will pay super-tax in respect of the profit out of which such dividends are paid -....
>
> 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 ITR 436 (Bom)) 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 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 expense 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.

5. The High Court of Bombay in taking this view in Industrial Investment Trust Co. case ((1968) 67 ITR 436 (Bom)) was guided by the decision of this Court in CIT v. South Indian Bank Ltd. ((1966) 59 ITR 763 : AIR 1966 SC 1541 : (1966) 2 SCR 674). Since the decision in South Indian Bank case ((1966) 59 ITR 763 : AIR 1966 SC 1541 : (1966) 2 SCR 674) is the only decision of this Court respecting an allied provision prior to the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246), 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). The question which arose in South Indian Bank case ((1966) 59 ITR 763 : AIR 1966 SC 1541 : (1966) 2 SCR 674) was in regard to the true interpretation of a notification issued by the Central Government under Section 60-A 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 Co. case ((1968) 67 ITR 436 (Bom)), but it came up for construction before this Court earlier in South Indian Bank case ((1966) 59 ITR 763 : AIR 1966 SC 1541 : (1966) 2 SCR 674). This notification was in the following terms :

> No income tax shall be payable by an assessee on the interest receivable on the following income tax free loans issued by the former Government of Travancore or by the former Government of Cochin, provided that such interest is received within

> the territories of the State of Travancore-Cochin and is not brought into any other part of the taxable territories to which the said Act applies. Such interest shall, however, be included in the total income of the assessee for the purposes of Section 16 of the Indian Income-tax Act, 1922.....

The argument of the Revenue was that the exemption from income tax granted under this notification was in respect of interest receivable on securities minus the expenses incurred in earning it and not in respect of the entire amount of interest because it was only that amount of interest arrived at after computation in accordance with Section 8 of the old Act which was includible in the total income and liable to bear tax and the exemption from 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 provisions of Section 8 of the Income Tax Act at all. It gives a total exemption from income tax to an assessee in respect of the interest receivable on income tax free loans mentioned therein. It gives that exemption subject to two conditions, namely, (i) that the interest is received within the territories of the State of Travancore-Cochin, and (ii) that it is not brought into any other part of the taxable territories. It includes the said exempted interest in the total income of the assessee for the purpose of Section 16 of the Income Tax Act. Shortly stated, the notification is a self-contained one; it provides an exemption from income tax payable by an assessee on a particular class of income subject to specified conditions. Therefore, there is no scope for controlling the provisions of the notification with reference to Section 8 of the Income Tax Act. The expression "interest receivable on income tax free loans" is clear and unambiguous. Though the point of time from which the exemption works is when it is received within the territories of the State of Travancore-Cochin, what is exempted is the interest receivable. 'Interest receivable' can only mean the amount of interest calculated as per the terms of the securities. It cannot obviously mean interest receivable minus the amount spent in receiving the same.
>
> It 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".

6. 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-A in the Indian Income Tax Act, 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.

7. When the Indian Income Tax Act, 1922 was repealed and the Income Tax Act, 1961 was enacted with effect from April 1, 1962, Section 99 sub-section (1) 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 up to March 1, 1965 subject to a minus 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) but it did come 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 CIT v. New Great Insurance Co. Ltd. ((1963) 90 ITR 348 (Bom)) 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, accordingly 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 High 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. Clause (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 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 meaning of the words "any dividend received by it from an Indian company" which represented the quantum of income in respect of which exemption from super-tax was granted under the section. 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 CIT v. Darbhanga Marketing Co. Ltd. ((1971) 80 ITR 72

> (Cal)) and this decision of the Calcutta High Court was noted with approval by the High Court of Bombay in New Great Insurance Co. case ((1963) 90 ITR 348 (Bom)). The same view was also taken by the Madras High Court in CIT v. Madras Motor and General Insurance Co. ((1975) 99 ITR 243 (Mad)) and it was approved in a later decision of the same High Court in Madras Auto Service v. ITO ((1975) 101 ITR 589 (Mad)). 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".

8. This view taken by the three High Courts was strongly relied upon by the petitioners in support of the construction of Section 80-M canvassed on their behalf and in fact the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 80-M which, as we shall presently point out, is different in its structure, language and content from clause (iv) of sub-section (1) of Section 99. We may point out that some doubt was raised on behalf of the Revenue in regards 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 80-M 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 80-M 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.

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

> 85-A. Deduction of tax on inter-corporate dividends. - Where the total income of an assessee being a company includes any income by way of dividends received by it from an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, the assessee shall be entitled to a deduction from the income tax with which it is chargeable on its total income for any assessment year of so much of the amount of income tax calculated at the average rate of income tax on the income so included (other than any such income on which no income tax is payable under the provisions of this Act) as exceeds an amount of twenty-five per cent thereof.....
>
> This section too came to be considered by the Bombay High Court in New Great

> Insurance Co. case ((1963) 90 ITR 348 (Bom)) because two of the assessment years with which the Bombay High Court was concerned in that case were assessment years 1965-66 and 1966-67 when Section 85-A was in force. The Bombay High Court pointed out that except for some minor verbal changes, Section 85-A 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 (1) clause (iv) was in regard to super tax, while the deduction allowed under Section 85-A was in regard to income tax. The same interpretation was, therefore, placed on Section 85-A as in the case of Section 99 sub-section (1) clause (iv) and it was held that under Section 85-A, the assessee would be entitled 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 85-A was construed as referring to the category of income by way of dividends received from an Indian company, so that if this particular category of income is included in the computation of total income, the assessee would be entitled to a deduction of so much of the amount of income tax calculated at the average rate of income tax on the "income so included" as exceeds an amount of twenty-five per cent of such income. The words "income so included" were read to mean not the quantum of the "income by way of dividends" included in the total income but the income falling within the category of "income by way of dividends from an Indian company" included in the total income. Thus, the view taken by the Bombay High Court was that under Section 85-A 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".

10. But here again we are not concerned to inquire whether the view taken by the Bombay High Court in New Great Insurance Co. case ((1963) 90 ITR 348 (Bom)) is correct, though it must be conceded that it has been held to be correct in the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). We do feel, however, that another view in regard to the interpretation of Section 85-A 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 85-A by the Bombay High Court in New Great Insurance Co. case ((1963) 90 ITR 348 (Bom)) is correct or not, because we are not concerned here with the interpretation of Section 85-A. It is Section 80-M which has to be construed and this section, as we shall presently show, is materially different from Section 85-A. We cannot construe Section 80-M in the light of the interpretation placed on its predecessor section by the Bombay High Court particularly when Section 80-M is admittedly worded differently from its predecessor section. We must construe Section 80-M on its own language and arrive at its true interpretation according to the plain natural meaning of the words used by the Legislature.

11. It seems that the spate of changes in this legislative provision did not come to an end with the enactment of Section 85-A. The original Chapter VI-A and certain other sections including Section

85-A were deleted from the present Act by the Finance (No. 2) Act, 1967, with effect from April 1, 1968, and replaced by a new Chapter VI-A which contains a fasciculus of sections from Section 80-A to Section 80-VV. Section 80-A, 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 80-C to Section 80-VV 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 80-B to mean the total income computed in accordance with the provisions of the Act before making any deductions under Chapter VI-A or under Section 280-D. Section 80-M is the new section which corresponds to the repealed Section 85-A and it provides for deduction in respect of certain categories of inter-corporate dividends. It is the interpretation of this section which constitutes the subject-matter of controversy between the parties and hence it would be desirable to set it out in extenso. This section has undergone changes from time to time since the date of its enactment and we will therefore reproduce it in the form in which it stood when originally enacted :

> 80-M. 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 respect of such income by way ofdividends received by it from an Indiancompany which is not such a company as isreferred to in Section 108 and which is 80% of suchmainly engaged in a priority industry income;(ii) in respect of such income by way ofdividends other than the dividends referred 65% of suchto in sub-clause (i) income;(b) where the assessee is a domestic company -in respect of any such income by way of dividends 60% of such income.##
>
> There were several amendments made subsequently in this section but they relate primarily to the percentage of the income to be allowed as a deduction and do not have any bearing on the question of interpretation posed before us. One amendment is however material and that was made by the Finance Act, 1968 by which the words "received by it" occurring in sub-section (1) of Section 80-M were omitted with effect from April 1, 1968, so that right from the date of its enactment, Section 80-M sub-section (1) was to be read as if the words "received by it" were not in the opening part of that provision.

12. Soon after the enactment of Section 80-M a question arose before the Gujarat High Court in Addl. CIT v. Cloth Traders Pvt. Ltd. ((1974) 97 ITR 140 (Guj)) 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 November 28, 1973, held that the deduction permissible under Section 80-M 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). This Court overruled the view taken by the Gujarat High Court and held that the deduction required to be allowed under Section 80-M must be calculated "with reference to the full amount of dividends received from a domestic company and not with reference to the dividend income as computed in accordance with the provisions of the Act, that is, after making deductions provided under the Act". This decision was given by the Court on May 4, 1979.

13. Now, according to Parliament, this interpretation placed on Section 80-M 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 80-AA with retrospective effect from April 1, 1968, that is, the date when Section 80-M was originally enacted, providing that the deduction required to be allowed under Section 80-M in respect of inter-corporate 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 80-AA 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 80-AA. 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 80-AA, because that would have the effect of enhancing the tax burden on the assessee by setting at naught the interpretation placed on Section 80-M by the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) and reducing the amount of deduction required to be allowed under Section 80-M. However, as pointed out at the commencement of this judgment, it would become necessary to examine this complaint against the constitutional validity of retrospective operation of Section 80-AA only if we affirm the interpretation placed on Section 80-M by the decision of this Court in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). If we do not agree with the decision of this Court in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) and take the view that the Gujarat High Court was right in the interpretation placed by it on Section 80-M in Addl. CIT v. Cloth Traders Pvt. Ltd. ((1974) 97 ITR 140 (Guj)), no question of constitutional validity of the retrospective operation of Section 80-AA would remain to be considered, because in that event Section 80-AA in its retrospective operation would be merely clarificatory in nature and would not involve imposition of any new tax burden.

14. We may therefore first examine the language of Section 80-M for arriving at its true interpretation. But before we do so, let us consider what is the object behind grant of relief under Section 80-M. It was common ground between the parties that the main object of the relief under Section 80-M 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 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 80-M 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 which 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 assessee. Bearing in mind these prefatory observations in regard to the legislative object, we may now proceed to construe the language of Section 80-M.

15. Section 80-M sub-section (1) opens with the words "where the gross total income of an assessee...includes any income by way of dividends from a domestic company" and proceeds to say that in such a case, there shall be allowed in computing the total income of the assessee, a deduction "from such income by way of dividends" of an amount equal to the whole of such income or 60 % 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 80-M. 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 80-B clause (v) to mean "total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A or under Section 280-D". 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, forms part of the gross total income, the condition specified in the opening part of sub-section (1) of Section 80-M would be fulfilled and the provision enacted in that sub-section would be attracted.

16. 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 the opening part of sub-section (1) of Section 80-M 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 the 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246), but on fuller consideration, we do not think it is well founded. We may assume with the Court in Cloth Trader case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 quantum of the 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 income 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 category 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 grammar, 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) that the words "such income by way of dividends" as a matter of plain grammar must be substituted by the words "income by way of dividends from a domestic company" in order to arrive at a proper construction of the section, but there is a clear fallacy in this observation, because in making the substitution it shops short with the words "income by way of dividends from a domestic company" and does not go the full length to which plain grammar must dictate us to go, namely, "income by way of dividends from a domestic company included in the gross total income". 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.

17. There is also one other strong indication in the language of sub-section (1) of Section 80-M 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) presumably because it was not brought to the attention of the Court. The Court observed in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 total income for arriving at the total income of the assessee. We are afraid this observation appears to have been made under some misapprehension, because what sub-section (1) of Section 80-M 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 80-M 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 80-M 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 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 85-A, the correctness of which is not in issue before us, so far as sub-section (1) of Section 80-M 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.

18. The view which we are taking in regard to the construction of sub-section (1) of Section 80-M 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 Co. Ltd. v. CIT ((1978) 113 ITR 84 : (1978) 2 SCC 644 : 1978 SCC (Tax) 119). This decision was rendered by the Court on April 11, 1978 at least a year before the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246), but, unfortunately, it appears, it was not brought to the attention of the Court when the Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 (Tax) 246) 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 (Tax) 246). The section which came up for consideration before the Court in Cambay Electric Supply Co. case ((1978) 113 ITR 84 : (1978) 2 SCC 644 : 1978 SCC (Tax) 119) was undoubtedly a different one, namely, Section 80-E, but the reasoning which prevailed with the Court in placing a particular interpretation on sub-section (1) of Section 80-E would equally be applicable in the interpretation of sub-section (1) of Section 80-M. Section 80-E as it stood at the material time provided inter alia as follows in sub-section (1) :

> 80-E. 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 Co. case ((1978) 113 ITR 84 : (1978) 2 SCC 644 : 1978 SCC (Tax) 119) 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 % contemplated in sub-section (1) of Section 80-E. 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 80-E 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 % 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% 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 unabsorbed 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% deduction. Tulzapurkar, J. speaking on behalf of the Court analysed the provisions of sub-section (1) of Section 80-E in the following words : (SCC p. 652, para 6)

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 assessee in accordance with the other provisions of the Act i.e. in accordance with all the provisions except Section 80-E; secondly, ascertain what part of the total income so computed represents 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% 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 80-E to the facts of the case before him and observed : (SCC p. 655, para 10)

As indicated earlier, sub-section (1) contemplates three steps being taken for computing the special deduction permissible thereunder and arriving at the net income exigible to tax and 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 business 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 80-E and since in this case it is income from business the same will have be computed in accordance with Section 30 to 43-A 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% contemplated by Section 80-E(1).

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 80-E 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 80-E the same interpretation must also govern the language of sub-section (1) of Section 80-M. Structurally there is hardly any difference between Section 80-E sub-section (1) and Section 80-M sub-section (1) and the reasoning which appealed to the Court in the interpretation of sub-section (1) of Section 80-E must apply equally in the interpretation of sub-section (1) of Section 80-M. We find ourselves wholly in agreement with the view taken by the Court in Cambay Electric Supply Co. case ((1978) 113 ITR 84 : (1978) 2 SCC 644 : 1978 SCC (Tax) 119) and we must therefore dissent from the interpretation placed on sub-section (1) of Section 80-M by the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246).

19. But, even if in our view the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) is erroneous, the question still remains whether we should overturn it.

Ordinarily we 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 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 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 mistake 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 (333 US 611) : "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 ((1960) AC 459) : "The doctrine of precedent does not compel Your Lordships to follow the wrong path until you fall over the edge of the cliff." Her we find that there are overriding considerations which compel us to reconsider and review the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). In the first place, the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) was rendered by this Court on May 4, 1979 and immediately thereafter, within a few months, Parliament introduced Section 80-AA with retrospective effect from April 1, 1968 with a view to overriding the interpretation placed on Section 80-M in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). The decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 80-M prior to the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 80-M given by any High Court prior to the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246), was that of the Gujarat High Court in Addl. C.I.T. v. Cloth Traders Ltd. ((1974) 97 ITR 140 (Guj)) 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 if if the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) was overturned by us. If despite the decision of the Gujarat High Court in Addl. C.I.T. v. Cloth Traders Pvt. Ltd. ((1974) 97 ITR 140 (Guj)) 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 80-M was liable to be calculated with reference to the full amount of dividend 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 80-M 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 reasons we have already discussed, that the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 80-M 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) and that is the decision in Cambay Electric Supply Co. case ((1978) 113 ITR 84 : (1978)

2 SCC 644 : 1978 SCC (Tax) 119). The decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) is inconsistent with that in Cambay Electric Supply Co. case ((1978) 113 ITR 84 : (1978) 2 SCC 644 : 1978 SCC (Tax) 119). 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 necessitates an inquiry into the correctness of the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246). It is for this reason that we have reconsidered and reviewed the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) and on such reconsideration and review, we have come to the conclusion that the decision in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) is erroneous and must be overturned.

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

21. 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.

AMARENDRA NATH SEN, J. (concurring) -

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 80-M of the Income Tax Act. He has also considered the earlier decisions of various courts including the decisions of this Court in Cloth Traders Ltd. v. Addl. CIT ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) and in Cambay Electric Supply Industrial Co. Ltd. v. CIT ((1978) 113 ITR 84 : (1978) 2 SCC 644 : 1978 SCC (Tax) 119). He has analysed the provisions of Section 80-M 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. I, however, wish to make some observations of my own.

23. The authority and jurisdiction of a larger Bench of this Court to override and overrule any decision of a smaller Bench cannot be questioned. I am, however, of the opinion that the 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 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 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 interfere with the decision, as this Court will not permit a wrong decision to operate as good law of the land.

24. On a careful consideration of all the relevant facts and circumstances of this case and the earlier decisions which have 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 80-M and has correctly construed the same, applying the well settled principles of construction. I agree with my learned brother and the reasons given by him for coming to the conclusion that the decision of this Court in Cloth Traders Ltd. v. Additional Commissioner of Income Tax ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) is erroneous. In my opinion, it cannot be said that in deciding the case of Cloth Traders Ltd. ((1979) 118 ITR 243 : (1979) SCC 538 : 1979 SCC (Tax) 246) this Court had taken one of two reasonably possible views. As my learned brother in his judgment has apply pointed out on a proper interpretation of Section 80-M that the view taken by this Court in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) is fallacious and wrong. I am in entire agreement with the interpretation of Section 80-M made by my learned brother for reasons stated in his judgment.

25. It may be noted that as soon as the decision of this Court in Cloth Traders case ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) 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 80-AA with retrospective effect. In view of the proper interpretation of Section 80-M in the judgment of my learned brother with which I agree, it cannot be said that Section 80-AA has the effect of imposing any fresh tax with retrospective effect. Section 80-AA 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 ((1979) 118 ITR 243 : (1979) 3 SCC 538 : 1979 SCC (Tax) 246) cannot be said to have held the field for any length of time to cause any serious prejudice to an assessee. The decision of the Gujarat High Court in Cloth Traders case ((1974) 97 ITR 140 (Guj)) 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 ((1974) 97 ITR 140 (Guj)). This appeal has also been fully dealt with in the judgment of my learned brother.

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

</html