

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Sundram Industries (P) Ltd.

(S.P. Bharucha, D.P. Mohapatra and Y.K. Sabharwal JJ.)

01.11.2000

ORDER

1. The Revenue is in appeal against the judgment of a Division Bench of the High Court at Madras delivered upon a reference application by the Revenue. The three questions that the High Court considered read as follows:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income-tax Officer was not justified in diminishing the capital base with reference to the deductions allowed under Chapter VI from the total income?

2. Whether the Tribunal's view that for the purpose of the computation of capital base, the provisions of Rule 4 of the Second Schedule would apply only to items of income which are wholly exempt under Chapter III and that those provisions would not apply to the deduction allowed under Chapter VI-a is sustainable in law?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that for the purpose of the computation of chargeable profits, the deduction under Rule 1(viii) of the First Schedule should be made only with reference to gross dividends but not the net dividends as done by the Income-tax Officer?

The High Court answered the questions in the affirmative and in favour of the assessee.

2. It is not in dispute that the first two questions are covered against the Revenue by the judgment of this Court in *Second Income Tax Officer and Anr. v. Stumpp Schuele and Somappa P. Ltd.* 187 I.T.R. 108. The question to consider, therefore, is the third question. The judgment of this Court in *Distributors (Baroda) P. Ltd. v. Union of India and Ors.* 155 I.T.R. 120 delivered in respect of a similar provision was considered by the Delhi High Court, in the case of *Commissioner of Surtax v. Modi Industries Ltd.* 200 I.T.R. 325. The question before the Delhi High Court was akin to Question No. 3 before us. The Delhi High Court considered the judgment in *Distributors (Baroda) Pvt. Ltd. (S.C.)* and noted that following that judgment, several High Courts had taken the view that on a correct interpretation of Rule 1(viii) of the First Schedule to the Companies (Profits) Surtax Act, 1964, it was only the net dividend which was included in the total income and, therefore, it was this amount which was deductible in arriving at the figure of the chargeable profits. In our view, having regard to the language of the Rule, this is the correct position and, accordingly, we affirm the view taken by the Delhi High Court in the case of *Modi Industries Ltd.* The third question is, therefore,

answered in the negative and in favour of the Revenue.

3. The civil appeals are allowed to that extent.

4. No order as to costs.