

## Deductions allowable under one provision can't be withdrawn unless other overriding provision is overstepped

**Summary – The Mumbai ITAT in a recent case of Shah Investments Financials Developments & Consultants Ltd., (the Assessee) held that once deduction is allowable under specific section, which is on an altogether different footing, same cannot be withdrawn by any other section unless conditions mentioned under any overriding section have been infringed.**

### Facts

- The assessee-company was engaged in the business of purchase and sale of shares and securities and investments in mutual funds.
- The assessee has received dividend from a company in the financial year 2002-03, relevant for the assessment year 2003-04 and the dividend was distributed to the shareholders only before the due date of filing of the return of income and, deduction under section 80M.
- The Assessing Officer noticed that section 115-O clearly provides that the dividend distributed will be subject to additional tax and no deduction shall be allowed under any other provisions of the Act and held that as the dividend was subject to tax under sub-section (1) of section 115-O, no deduction under section 80M was allowable to the assessee.
- The assessee submitted that during the relevant assessment year, the dividend was taxable in the hands of the assessee and the assessee was entitled to claim the deduction in respect of the dividend distributed by it before the due date of filing of the return of income and, accordingly, deduction under section 80M was allowable.
- The Assessing Officer further held the assessee had received dividend *i.e.*, during the relevant assessment year 2003-04, but had made the payment of dividend, before the due date of filing of the return of income for the assessment year 2003-04. Thus, the dividend being not declared out of the profits of the assessment year 2002-03, the assessee was not entitled for deduction under section 80M.
- The Commissioner (Appeals) affirmed the action of the Assessing Officer.
- On further appeal:

### Held

- Section 80M provides that where the gross total income of a domestic company includes any income by way of dividends from a domestic company, then deduction of an amount equal to the amount of income by way of dividend shall be allowed while computing the total income of such domestic company if it does not exceed the amount of dividend distributed. The other condition of allowing the deduction under section 80M, is that the dividend should have been distributed on/or before the due date of filing of the return of income as specified in section 139(1). Thus, the

provision of section 80M was clearly applicable in the assessment year 2003-04, as the same has been omitted with effect from the assessment year 2004-05. Thus, any domestic company which has received the dividend income from another domestic company and has distributed such dividend on/or before the due date of filing of the return of income [as specified in section 139(1)], then deduction under section 80M has to be allowed.

- From the expression used in section 115-O, it is evident that firstly, sub-section (1) starts with a *non obstante* clause which provides that in addition to the income tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividend on/or after 1st April, 2003, whether out of current or accumulated profit, shall be charged to additional income-tax at the rate specified therein. Thus, the dividend distributed was subjected to additional tax; secondly, even though, no income-tax is payable by domestic company on its total income, then also, the tax on distributed profits for the dividend declared or distributed shall be payable; thirdly, the Principal Officer is liable for payment of tax on such distributed dividend within 14 days; fourthly, the tax on distributed profits is to be treated as final payment of tax in respect of such declared / distributed dividend and no further credit of such tax paid can be claimed; and lastly, no deduction under any other provision of the Act shall be allowed to the company or a shareholder in respect of the amount which has been subjected to tax on the dividend declared or distributed. Thus, sub-section (5) only restricts the claim of deduction in respect of the amount paid on dividend distributed.
- The purpose of section 115-O was to tax the dividend at the time of declaration / distribution and, therefore, such dividend is not taxed in the hands of the shareholder. This is clear from the provisions of section 10(33)(1) which was applicable on 1st April, 2003 and later on in section 10(34) with effect from 1st April, 2004. This section exempts dividend which has been referred in section 115-O *i.e.*, it is treated as exempt in the hands of the recipients. The revenue's contention that sub-section (5) of section 115-O, bars the deduction under any other provisions of the Act by this overriding clause, is not correct. The bar which has been provided in sub-section (5) is only with respect to the deduction of the amount of tax which has been charged under sub-section (1) *i.e.*, additional tax on the amount of dividend declared and distributed. There is no inherent contradiction in the deduction provided in section 80M and the tax which is to be charged on distributed profits of domestic companies.
- In the present case, it is very important to note that it is not the case of the department that the additional tax is to be levied on the dividend distributed by the domestic company, which has been received by the assessee or the dividend income has been claimed as exempt as such or the deduction of any tax paid on dividend has been claimed. Here the assessee has not been claiming any exemption on dividend as an exempt income in its hand either under section 10(33) or 10(34). The assessee's claim of deduction under section 80M, is entirely on a different footing *i.e.*, it has received the dividend and the same has been distributed. Otherwise also, once the deduction is allowable under specific section, which is on an altogether different footing, the same cannot be

withdrawn by any other section unless the conditions mentioned under any overriding section have been infringed. The purpose and intent of section 115-O is entirely different inasmuch sought to tax the dividend at the time of declaration / distribution / payment and such payment of tax cannot be claimed as deduction under any section or any other provision. Thus, in the present case, the deduction allowable under section 80M to the assessee is not overridden by section 115-O as held by the Assessing Officer as well as the Commissioner (Appeals). Accordingly, the claim of deduction under section 80M is clearly allowable as all the conditions mentioned therein have been fully complied with.

- As regards the issue whether the dividend has been distributed from the profits of assessment year 2003-04 or not, from the records, it is seen that the assessee has distributed the same quantum of amount of dividend which was received in September 2002 to its shareholders on 29th October, 2003. The assessee had the time-limit for such distribution up to the date of filing of the return of income. In such a situation, the presumption can be drawn that the dividend has been distributed out of the same quantum of dividend received only, unless something is brought on record that the said dividend income has been specifically used for some other purpose. This has not been controverted by the Assessing Officer. He is only drawing a presumption that this amount of dividend distributed is out of the profits of the assessment year 2004-05 and not assessment year 2003-04. There is no material on record to this conclusion of the Assessing Officer, especially when in the original round of scrutiny proceedings under section 143(3), the assessee's contention has been accepted. Thus, the findings of the Assessing Officer and Commissioner (Appeals) cannot be affirmed, sans any contrary material on record. Accordingly, in view of the aforesaid observation, the assessee's claim of deduction under section 80M, is clearly allowable as the same is within the mandate of section 80M, as all the conditions mentioned therein stands fulfilled for which there is no dispute by the Department and provisions of section 115-O will not negate the assessee's claim for deduction under section 80M in this year, as the provisions of section 115-O are for different purpose altogether.