Commissioner of Income-Tax, Bombay City II

Vs

Shakuntala and Others

Civil Appeals Nos. 125, 231 and 447 of 1960

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

18.07.1961

JUDGMENT

S. K. DAS J. –

These three appeals, with special leave of this court, have been heard together. They arise out of three income-tax references made to the High Court of Bombay, namely, Income-tax Reference No. 29 of 1957 Income-tax Reference No. 30 of 1957 and Income-tax Reference No. 37 of 1957. The facts are similar in the three cases and the question of law which the High Court had to answer in its leading judgment in Income-tax Reference No. 29 of 1957, and the other two references were disposed of in accordance with that answer. For the purposes of these appeals, it would be enough if we state the facts of Reference No. 29 and then indicate the question which arose for decision and the answer which the High Court gave to it.

One NanaLal Haridas was the karta of a Hindu undivided family which admittedly was the beneficiary of 1,842 shares in a company called the Cotton Export and Import Limited (hereinafter referred to as the company). The shares were held in the names of different members of the family as given below :

> #No. of shares Name or names in which they stand877 Tribhuvandas Haridas815 Nanalal Haridas150 Nanalal Haridas and Tribhuvandas Haridas##

The company was one in which the public were not substantially interested. For the assessment year 1949-50 the Income-tax Officer concerned applied the provisions of section 23A of the Indian Income- tax Act, 1922 (asit stood previous to the amendment of 1955), and ordered that the undistributed portion of the assessable income of the company of the relevant previous year, as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by it in respect thereof, shall be deemed to have been distributed as dividend among the shareholders as at the date of the relevant general meeting of the company. The proportionate amount of dividend of the 1,842 shares, after being grossed up, came to Rs. 54,307. This amount the Income-tax Officer added to the income of the joint family. The assessee-family claimed that the dividend deemed to have been distributed under section 23A should be assessed in the hands of the shareholders, that is, the persons in whose names the shares stood regis

> "Whether the dividend income of Rs. 54,307 is to be assessed in the hands of the assessee, the Hindu undivided family ?"

The Tribunal was of the view that the question did arise out of its order and made a reference to the

High Court accordingly.

The High Court by its order dated September 25, 1957, answered the question in favour of the assessee. It held that in respect of an income which was deemed to be distributed under the provisions of section 23A the section in terms provided that the proportionate share of the shareholders in such distribution should be included in their income; and as the Hindu undivided family was not and could not be a registered shareholder of the company, the amount in question could not be treated as the income of the Hindu undivided family under the provisions of that section. The High Court re-affirmed the view it had expressed in its earlier decision in Cambatta v. Commissioner of Income-tax.

The High Court having refused leave to appeal to this court from its decision in question, the Commissioner of Income-tax, Bombay, applied to this court for special leave and having obtained such leave has brought these appeals to this court.

It is necessary now to read the relevant portion of section 23A as it stood prior to its amendment by the Finance Act, 1955.

> "23A. Power to assess individual members of certain companies. -
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> (I). Where the Income-tax Officer is satisfies that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting are less than sixty per cent. of the assessable income of the company of that previous year, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the Previous year as computed for income-tax purposes and reduced by the amount of income- tax and super-tax payable by the company in respect thereof shall be deemed to have been distributed as dividends amongst the shareholders as at th
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> Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof."

The section in effect creates a fictional or notional dividend income which is not in fact received by the shareholder. The notional dividend is deemed to have been distributed as on the date on which the accounts of the previous year were laid before the company in a general meeting. It is clear from the section that an order made under it is not in itself an order of assessment; it has to be followed by an assessment on the shareholder either under section 23 or under section 34. Under the express terms of the section, the artificial or notional income has to be included in the total income of the shareholder for the purpose of assessing his total income. The High Court has referred to its earlier decision in Cambatta v. Commissioner of Income-tax. That decision laid down that where a share stood registered in two or more names, the registered holders treated as an association of persons must be regarded as the "shareholder" under section 23A and they must be assessed accordingly. It further laid down that

The learned counsel for the appellant has urged two points in support of his contention that the expression "shareholder" in section 23A means the person who owns the share, irrespective of the circumstance whether that person is registered in the books of the company as a shareholder or not. His first point is that the very object of the section is to prevent avoidance of super-tax by the shareholders of a company, and if the beneficial owner of the shares is a Hindu undivided family, that family will not come within the purview of section 23A, because a Hindu undivided family as such cannot be a shareholder in a company. The argument is that the narrow interpretation put on section 23A will defeat the very purpose of the section. The second point urged is that the principle that a legal fiction must be carried to its logical conclusion cannot be overlooked in constrain section 23A. The legal fiction enjoined by the section is that the profits must be "deemed to have been distributed as dividend amongst the

We do not think that either of the two points urged by the appellant is really decisive of the question. The question is really one of interpretation of section 23A, and we must interpret section 23A with reference to its own terms. The section in express terms says that "the proportionate share of each shareholder shall be included in the total income of the shareholder for the purpose of assessing his total income." The section does not talk of the beneficial owner of the share. It talks of the shareholder only. Section 18(5) of the Act deals with grossing up of dividend and two expressions occur therein : "owner of the security" and the "shareholder." So far as the expression "shareholder" in section 18(5) means the shareholder registered in the books of the company. As we have earlier said, no good reason exists as to why the expression "shareholder" in section 23A shall not have the same meaning. Sub-sections (3) and (4) of section 23A also make the position clear; they talk of members of the company an

The position of a Hindu undivided family via-a-vis a partnership was considered by this court in Charandas Haridas v. Commissioner of Income-tax and Commissioner of Income-tax v. Nandlal Gandalal. It is not disputed that the Hindu undivided family as such was not a share- holder of the company in the present case. Therefore, so far as the notional income is concerned, we must, go by the terms of section 23A and if there is any lacuna in the wording of the section, we cannot cure it in the guise of interpretation. The question here is not one of deciding the matter from the point of view of partnership law or Hindu law, as was the question in Commissioner of Income-tax v. Nandlal Gandalal which led to a difference of opinion. The question here is one of interpretation only and that interpretation must be based on the terms of the section. The fiction enacted by the legislature must be restricted by the plain terms of the statute. Nor do we see how it can be said that the interpretation put on section 23A that

For these reasons we are of the view that the High Court correctly answered the question which was referred to it. In view of that answer the High Court rightly held that the second question referred to it did not fall for consideration. The result, therefore, is that all theses there appeals fail and must be dismissed with costs, one hearing fee.

Appeals dismissed.

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