

Hari Prasad Jayantilal and Co

Vs

V. S. Gupta, Income-Tax Officer, Ahmedabad, and Another

Civil Appeal No. 871 of 1964

(K. Subha Rao, S. M. Sikri, J. C. Shah JJ)

25.11.1965

JUDGMENT

SHAH J. –

The appellant - a company registered under the Indian Companies Act, 1913 - was assessed in the assessment years 1948-49 to 1953-54 in respect of the profits earned in its business, and was allowed rebate under the appropriate provisions contained in the Schedules to the relevant Finance Acts on the undistributed profits of the previous years. On December 31, 1956, at an annual general meeting of the shareholders, the company declared an aggregate sum of Rs. 2,15,232. As dividend for the year ending December 31, 1956. Thereafter a special resolution was passed for voluntary winding up of the company with effect from October 1, 1957, and for appointing a liquidator to wind up the affairs of the company. On October 20 and 21, 1957, the liquidator distributed to the shareholders Rs. 5,17,171.20 and thereafter on February 21 and 22, 1958, March 31, 1958, and July 27, 1959, the liquidator distributed diverse other amounts to the shareholders. In respect of each such distribution the liquidator issued an

The Income-tax Officer, Special Investigation Circle - B, Ahmedabad, in exercise of the power under section 35(10) of the Indian Income-tax Act, 1922, passed an order withdrawing the rebate granted in respect of each of the six assessment years 1948-49 to 1953-54 and demanded payment of tax on the amount of the rebate. The appellant then applied to the High Court of Bombay for writs quashing the orders of the Income-tax Officer and the notice of demand and directing the Income-tax Officer to withdraw and cancel the order and notice of demand. The petition was dismissed by the High Court. With certificate granted by the High Court, this appeal has been preferred.

Two questions are raised for determination in this appeal :

- (1) Whether section 35(10) authorises the Income-tax Officer to bring to tax rebate granted in assessment years commencing prior to April 1, 1956; and
- (2) Whether distribution by the liquidator of accumulated profits in the previous years could be regarded as declaration of dividend within the meaning of section 35(10) so as to attract the applicability of the provisions enabling withdrawal of rebate and demand for tax.

The first question is concluded by a recent judgment of this court in Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. S. G. Mehta, Income-tax Officer. In that case this court held that section 35(10) applied even though dividend was declared before April 1, 1956. Counsel for the company

urged that in the Ahmedabad Manufacturing and Calico Printing Co.'s case it was held that power to withdraw rebate granted in the year before April 1, 1952, was not exercisable by the Income-tax Officer under section 35(10) and consistently with that view withdrawal of rebate granted in the years ending on the and before March 31, 1952, was unauthorised. In Ahmedabad Manufacturing and Calico Printing Co.'s case declaration of dividend by the company was made on April 20, 1953. The financial year in which the amount on which rebate of income-tax was allowed was availed of by the company for declaring dividends was 1953-54, and within four years from the end of that year an order calling upon the company to show cause

"Since the power commenced on April 1, 1956, the utmost reach of the Income-tax Officer would be the end of assessment year 1952. Any declaration of dividend after 1st day of April, 1952 out of accumulated profits of any of the years in which rebate was earned would be within the time for the recall of the rebate. But a declaration prior to April 1, 1952, would be beyond the power of the Income-tax Officer to recall."

Power to withdraw rebate was in that case held exercisable within the four years from the end of the financial year in which the amount of rebate was availed of : it was not held that the power was exercisable in respect of the rebate granted only in respect of four years before April, 1956. The argument raised by counsel importing a limitation contrary to the plain words of the statute must therefore be rejected.

Sub-section (10) of section 35 was inserted in the Income-tax Act by section 19 of the Finance Act, 1956, with effect from April 1, 1956. It provides :

"Where, in any of the assessments for the years beginning on the 1st day of April, of the years 1948 to 1955 inclusive, a rebate of income- tax was allowed to a company on a part of its total income under clause (i) of the proviso to paragraph B of Part I of the relevant Schedules to the Finance Acts specifying the rebate of tax for the relevant year, and subsequently the amount on which the rebate of the income-tax was allowed as aforesaid, as the case may be, shall, by reason of the rebate of income-tax allowed to the company and to the extent to which it has not actually been subjected to an additional income-tax in accordance with the provisions of clause (ii) of the proviso to Paragraph B of Part I of the Schedules to the Finance Acts above referred to, be deemed to have been made the subject of incorrect relief under this Act, and the Income-tax Officer shall recompute the tax payable by the company by reducing the rebate originally allowed, as if the recomputation is a rectification of a mistake apparent

It is urged by counsel for the company that power under sub-section (10) of section 35 cannot be exercised because distribution of accumulated profits by the liquidator is not distribution by the company. The argument is wholly without substance. On the passing a special resolution by the company that it be wound up voluntarily under the Companies Act, 1956, (1 of 1956), the company does not stand dissolved. That is so expressly provided by section 487 of the Companies Act. A company which has resolved to be voluntarily wound up may be dissolved in the manner provided by section 497(5) : till then the company has corporate existence and corporate powers. The property of the company does not vest in the liquidator : it continues to remain vested in the company. On the appointment of a liquidator, all the powers of the board of directors and of the managing or whole-time directors, managing agents, secretaries and treasurers cease (Section 491), and the liquidator

may exercise the powers mentioned in section 512,

It is then urged that on the commencement of winding up, distinction between capital and accumulated profits of the company disappears, and a distributions made by the liquidator are distributions of capital, regardless of the source from which the funds are distributed is capital or accumulated profits. In distributing the surplus assets in his hands, the liquidator is therefore not "declaring dividends" within the meaning of section 35(10). In support of this contention, reliance was placed upon *Inland Revenue Commissioners v. Gorge Burrell*. The court in that case held that on the winding up of a limited company the undivided profits of the past year and the year in which winding up occurred were only assets of the company and, on distribution amongst the shareholders, super-tax was not payable on the undivided profits as income.

Under the Companies Act, 1956, accumulated profits of the company at the commencement of the winding up of the company undoubtedly come into the hands of the liquidator as assets for the purposes of satisfying liability of the company and for distribution amount the shareholders. But the rule in *Burrell's case*, since the amendment of the definition of "dividend" in section 2(6A) by the Finance Act, 1956, no longer applies, when the liability to assessment of income- tax in respect of amounts distributed out of accumulated profits by a liquidator in a winding up falls to be determined. Parliament had devised by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939) a special inclusive definition for the Income-tax Act, 1922, of "dividend" in section 2(6A). Being an inclusive definition, the expression "dividend" means dividends as ordinarily understood under the Companies Act, and also the head of payment or distribution specified therein. Clause (c), as originally enacted, included distributions made to the share

"any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not."

Amendment to clause (c) in section 2(6A) was made and section 35(10) was inserted in the Income-tax Act simultaneously by the Finance Act, 1956. It would be reasonable to regard the provisions of section 35(10) and amended clause (c) of sub-section (6A) of section 2 as part of a single scheme to declare distribution of accumulated profits capitalized or not as dividends, and to bring the rebate granted on undistributed profits to tax if availed of by the company or by the liquidator of a company for distributing dividends.

Counsel for the company contended that the amount distributed out of accumulated profits by the liquidator is not dividends in the hands of the company. For this distinction again there is no warrant. Distribution of accumulated profits by a company not subject to winding up is distribution of dividend by virtue of section 2(6A) (a), and distribution of accumulated profits in the course of liquidation is dividends by virtue of section 2(6A) (c). It is true that the definition of "dividend" in section 2(6A) (c) will apply only if there is nothing repugnant in the subject or context in which the expression "dividend" occurs in section 35(10), but there is nothing in section 35(10) which suggests that the expression "dividend" was to have a meaning different from the meaning assigned to it by the interpretation clause.

It was urged that the assuming that accumulated profits of a company distributed by the liquidator may be regarded as divided, power under section 35(10) cannot be exercised in respect of those profits, because the liquidator is not a in distributing the profits "declaring dividends". But the assumption underlying the argument that the Companies Act provides that dividends may be

deemed to be declared only if certain mandatory provisions are complied with is without substance. By section 205 of the Indian Companies Act, 1956 (before it was amended in 1960), it was provided that no dividend shall be declared or paid except out of the profits of the company or out of moneys provided by the Central or a State Government for the payment of the dividend in pursuance of a guarantee given by such Government. The company in the present case was registered under the Indian Companies Act, 1913. The articles of association of the company are not before use but the articles relating to distribution of dividend being unde

The liquidator of the appellant-company did from time to time distribute accumulated profits, and within the meaning of section 2(6A) (c) read with the provisions of the Companies Act, they were distribution of interim dividends. It is true that power under section 35(10) may be exercised if accumulated profits are availed of by the company "for declaring dividends in any year", but since the Companies Act does not in the matter of distribution of interim dividends set up any special machinery, nor impose any special condition before power in that behalf may be exercised, no artificial meaning can be attached to the word "declaring dividends". Distribution of accumulated profits by the liquidator together with the income-tax refund certificate in the course of voluntary winding up may, therefore, for the purpose of section 2(6A) (c), be regarded as declaration of dividend.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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