

SUREME COURT OF INDIA

Commissioner of Income-Tax, Central, Calcutta

Vs.

Gold Mohore Investment Co. Ltd.

(J Shah, S Sikri and V Ramaswami JJ.)

18.07.1967

JUDGMENT

RAMASWAMI J.

1. This appeal is brought from the judgment of the Calcutta High Court dated March 10, 1964, in Income-tax Reference No. 116 of 1960.

2. The relevant assessment year is 1950-51 and the corresponding previous year ended on March 31, 1950. In respect of the said assessment year the Income-tax Officer made an order dated March 15, 1956, under section 23A(1) of the Income-tax Act, 1922 (hereinafter referred to as "the Act"). By the said order the Income-tax Officer held that Rs. 35,476 should be deemed as having been distributed as dividend by the respondent and the proportionate share thereof of each shareholder should be included in the total income of such shareholder for the purpose of assessing his total income. The balance-sheet of the respondent disclosed past losses amounting to Rs. 45,692 which had been brought forward. The Income-tax Officer held that such losses resulted from the failure of the respondent in not properly accounting for some bonus shares received by it. The Income-tax Officer recomputed the losses of the respondent in earlier years by valuing the bonus shares received by the respondent at nil and, accordingly, held that the losses amounted to Rs. 6,509. The aforesaid computation was made mainly by disallowing Rs. 37,500 from the debits in the share account and adding Rs. 10,151 on account of grossing up of dividends and interest on securities. The sum of Rs. 37,500 represented the cost of bonus shares at face value which had been debited in the share account by the respondent. The respondent took the matter in appeal to the Appellate Assistant Commissioner who, by his order dated May 11, 1957, cancelled the order of the Income-tax Officer under section 23A. The Appellate Assistant Commissioner took the view that the losses of the earlier accounting period amounted to Rs. 6,509, the income-tax chargeable for the relevant assessment year amounted to Rs. 17,829 and the subscribed capital of the respondent amounted to Rs. 6,00,000. The Appellate Assistant Commissioner therefore held that the profits of the respondent cannot be held to be adequate to justify the application of the provisions of section 23A of the Act. Thereafter, the Commissioner of Income-tax preferred an appeal to the Appellate Tribunal which set aside the order of the Appellate Assistant Commissioner and restored the order of the Income-tax Officer under section 23A. The Appellate Tribunal dealt with the question of past losses and the accounting of bonus shares and agreed with the findings of the Income-tax Officer and held that the past losses amounted to Rs. 6,509. The Appellate Tribunal further held that the Appellate Assistant Commissioner should not have taken into consideration the actual tax liability of Rs. 17,829. The Appellate Tribunal observed that the Appellate Assistant Commissioner was

wrong in taking into consideration the subscribed and the paid up capital for the purpose of computing it with the profits made in the year of account. Under section 66(1) of the Act the Appellate Tribunal drew up a statement of the case and referred the following question of law for the opinion of the High Court :

"(1) Whether, on the facts and in the circumstances of the case, the profits made by the applicant in the year of account did not attract the application of section 23A (1) ?

(2) Whether, on the facts and in the circumstances of the case, the tax liability for the assessment year under consideration, amounting to Rs. 17,829 should be taken into consideration for the purpose of determining whether an order under section 23A (1) should be made on the applicant ?"

3. By its judgment dated March 10, 1964, the High Court answered the first question in the negative. As regards the second question, it was conceded by counsel on behalf of the respondent that the Appellate Assistant Commissioner should not have taken into consideration the tax liability of Rs. 17,829 for his finding that no fund was available for payment of dividend. The High Court answered question No. 2 also in the negative in view of the concession made by counsel on behalf of the respondent.

4. The question presented for determination in this appeal is whether the High Court was right in holding that the bonus shares should have been valued at their face value and the loss of Rs. 35,000 on the valuation of the shares as such should have been considered in determining the applicability of section 23A. It was argued by Mr. S. T. Desai on behalf of the appellant that the view expressed by the High Court must be taken to have been impliedly overruled by the judgment of this Court in Commissioner of Income-tax v. Dalmia Investment Co. Ltd. It was contended by counsel that there had to be recomputation of the value of the bonus shares on the principle enunciated in that case. In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. In Commissioner of Income-tax v. Dalmia Investment Co. Ltd. it was held by this court that when bonus shares are issued in respect of ordinary shares held in a company by an assessee, their real cost to the assessee cannot be taken to be nil or their face value. The proper method of valuation is to spread the cost of the old shares over the old shares and the new issue (viz., the bonus shares) taken together if they rank *pari passu*, and if they do not, the price may have to be adjusted either in proportion of the face value they bear (if there is no other circumstance to differentiate them) or on equitable considerations based on the market price before and after issue. It is manifest that the question of application of section 23A (1) of the Act must be decided after recomputation of the value of the bonus share on the basis of the principle expressed by this court in Commissioner of Income-tax v. Dalmia Investment Co. Ltd.

5. For these reasons we allow this appeal, set aside the judgment of the High Court dated March 10, 1964, and direct that the High Court should rehear the reference keeping in view the principle laid down by this court in Commissioner of Income-tax v. Dalmia Investment Co. Ltd. It is desirable that the High Court should call for a supplementary statement of the case from the Appellate Tribunal under section 66(4) of the Act and thereafter decide the reference. The parties will bear their own costs up to this stage.

6. Appeal allowed. Case remanded.