

The Commissioner of Income-Tax, Calcutta

Vs

Nalin Behari Lal Singha, Etc.

Civil Appeal Nos. 736 - 739 and 913 of 1968

(CJI J. C. Shah, A. N. Grover, V. Ramswami-I JJ)

25.07.1969

JUDGMENT

SHAH, ACTING C.J. -

1. In a proceeding for assessment to income-tax for the year 1949-50 the respondents in these appeals claimed that the dividend distributed by the Ukhra Estate Zamindaries Ltd., was exempt from tax, because the fund out of which the dividend was distributed did not form part of the "accumulated profits" of the company. The Income-tax Officer rejected the contention and brought the dividend to tax in the hands of the respondents. The Appellate Assistant Commissioner held that Rs. 1,12,500 out of a total amount of Rs. 2,24,000/- distributed by the company, represented capital gains arising to the company on or after April 1, 1948 and not being dividend within the meaning of Section 2(6-A) of the Income Tax Act, 1922.

"The share distributed to the shareholders out of that amount was exempt from income-tax. The order of the Appellate Assistant Commissioner was reversed in appeal by the Tribunal. In the view of the Tribunal the definition of 'dividend' in Section 2(6-A) in force in the year of assessment was not exhaustive, and if the amount distributed was 'dividend in ordinary parlance it became chargeable under the general charging section', and that clause 2(6-A) "was concerned with deemed dividends, and exclusion of certain capital gains by the proviso had no bearing on the issue raised by the revenue".

2. The following question referred by the Tribunal to the High Court of Calcutta under Section 66(1) of the Indian Income-tax Act :

"Whether on the facts and in the circumstances of the case the amount of Rs. 28,125/- was rightly included as dividend in the total income of the assessee for the assessment year 1949-50 ?"

was answered in the negative. The Commissioner has appealed to this Court with certificates granted by the High Court.

3. 'Dividend' in its ordinary connotation means the sum paid to or received by a shareholder proportionate to his share holding in a company out of the total sum distributed. The relevant part of the definition contained in Section 2(6-A) of the Income-tax Act, 1922, in the year of assessment 1949-50 was as follows :

"Dividend' includes -

(a) any distribution by a company of accumulated profits whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

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Explanation. - The words 'accumulated profits' wherever they occur in the clause, shall not include 'capital profit' :

Provided further that the expression 'accumulated profits', wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st Day of March, 1948."

Dividend distributed by a company being a share of its profits declared as distributable among the shareholders, is not impressed with the character of the profits from which it reaches the hands of the shareholder. It would be therefore difficult to hold that the mere fact that a distribution has been made out of the capital gains, it has the attributes of capital gains in the hands of the shareholders. But that does not assist the case of the Revenue, for the Legislature has expressly excluded from the content of dividend, capital gains arising after March 31, 1948.

4. The proviso to the explanation clearly enacted that capital gains arising after March 31, 1948, are not liable to be included within the expression "dividend". The definition is, it is true, an inclusive definition and a receipt by a shareholder which does not fall within the definition may possibly be regarded as dividend within the meaning of the Act unless the context negatives that view. But it is difficult on that account to hold that capital gains excluded from the definition of dividend by express enactment still fall within the charge of tax. According to the definition in Section 2(6-A) of the Income-tax Act only the proportionate share of the member out of the accumulated profits (excluding capital gains arising in the excepted period) distributed by the company, alone will be deemed the taxable component.

5. There is no warrant for the view expressed by the Tribunal that the definition of 'dividend' only includes deemed dividend. To hold that the capital gains within the excepted period are not part of the accumulated profits for the purpose of the definition under Section 2(6-A) and a distributive share thereof does not on that account fall within the definition of 'dividend' and therefore of income chargeable to tax and still to regard them as a part of accumulated profits for the purpose of dividend in the popular connotation and to bring the share to tax in the hands of the shareholders is to nullify an express provision of the statute. We do not see any reason why such a strained construction should be adopted.

6. We agree with the High Court that the proportionate share of the capital gains out of which the dividend was distributed to the shareholders of the company must be deemed exempt from liability to pay tax under Section 12 as dividend income liable to tax.

7. Counsel for the Revenue sought to argue that share of dividend which is not chargeable to tax by virtue of the exemption clause is still liable to tax as income other than dividend. But no such contention was raised before the Tribunal or the High Court and no question was raised in that behalf. We will not be justified in entering upon the question which was not raised or argued before the Tribunal and before the High Court.

The appeals fail and are dismissed with costs. One hearing fee.

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