

The Commissioner of Income-Tax, Calcutta

Vs

Shaila Behari Lal Singha

Civil Appeals No. 2276 to 2278 of 1968,

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

21.08.1969

JUDGMENT

SHAH, ACTING C.J. -

1. Shaila Behari Lal Singha - hereinafter called 'the assessee' - is a shareholder of a company styled the Ukhara Estates Zamindaries Ltd. The following table sets out the amounts of dividend received by the assessee from the Company and the years in respect of which they were received :-

| #-----                 | Year of       | Year of declaration    | Amount of |
|------------------------|---------------|------------------------|-----------|
| assessment of dividend | dividend----- | 1951-52                |           |
| 1357 B.S. Rs. 37,125/- | 1952-53       | 1358 B.S. Rs. 29,250/- | 1953-54   |
|                        |               | 1359 B.S. Rs. 28,125/- | -----     |
| -----                  | ###           |                        |           |

The assessee claimed that out of the amounts set out in the table only Rs. 8,669/- for the year 1357 B.S., Rs. 20,469/- for the year 1358 B.S., and Rs. 21,822/- for the year 1359 B.S. were taxable as dividend, and the remaining amounts were not taxable, since they were declared out of capital gains of the Company which comprised salami or premia received by it as consideration for grant of long-term mining and other leases and as compensation for compulsory acquisition of lands for public purposes. The Income-tax Officer brought the entire amount to tax declared as dividend for each of the three years in question and grossed up the amounts under Section 16(2) of the Income-tax Act, 1922. In appeal, the Appellate Assistant Commissioner held that the entire amount for each year was income in the hands of the assessee, but only a part of it being dividend, within the meaning of Section 2(6-A) of the Income-tax Act, 1933, was liable to be grossed up. In second appeal, the Appellate Tribunal held that part of the amount distributed which was attributable to salami received by the Company for the grant of long-term leases was not taxable as dividend, but as income of the assessee from "other sources".

2. The Tribunal then referred under Section 66(1) of the Indian Income-tax Act, 1933, three questions to the High Court of Calcutta : the first two questions were referred at the instance of the assessee, and the third question at the instance of the Commissioner :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the distribution to the assessee of the amount attributable to land acquisition compensation received by the Ukhara Estate Zamindaries (P) Ltd., after the 31st March, 1948, was in the hands of the assessee, receipt of dividend within the meaning of Section 2(6-A) of the Indian Income-tax Act, 1922 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the receipt by the assessee of the amount attributable to salamis realized by the Ukhara Estate Zamindaries (P) Ltd. for grant of long-term leases after the 31st March, 1948, was a receipt of income in the hands of the assessee and taxable as the income of the assessee from other sources ?

(3) Whether, on the facts and in the circumstances of the case, the distribution to the assessee of the amount attributable to salamis realised by the Ukhara Estate Zamindaries (P) Ltd. for grant of long-term leases after the 31st March, 1948, was not in the hands of the assessee receipt of dividend within the meaning of Section 2(6-A) of the Indian Income-tax Act, 1922 ?"

3. The High Court recorded answers on all the questions in the negative, following their earlier judgments in Income-tax Reference Nos. 131 of 1961 and 3 of 1964. The High Court, however, observed that it was agreed between the parties that the answers in the negative on all the questions were subject to the final decision in appeals filed against the orders made in Income-tax Reference Nos. 131 of 1961 and 3 of 1964 and pending in this Court.

4. In our judgment, even with the consent of the parties, the learned Judges could not dispose of the reference in the manner they have done. They had to record their answers and their reasons in support of the answers : those answers were, insofar as the High Court was concerned, final. They could not stand modified by reason of any judgment in other cases decided by this Court. Apart from the technical defect that the High Court has not recorded final answers, the order is subject to another infirmity. The High Court had to decide on the facts of each case whether any amount of salami was capital gain, and whether any part of the compensation received for compulsory acquisition of land was capital gain. Prima facie, receipt of compensation for land compulsorily acquired which forms part of the fixed assets of a Company is of a capital nature : *Senairam Doongarmall v. Commissioner of Income-tax, Assam* (42 ITR 392), but interest which is statutorily payable on compensation is income and is not capital gain : *Dr. Shamlal Narula v. Commissioner of Income-tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala.* (53 ITR 151). The assumption made that the entire amount of compensation is deemed to be capital gain cannot therefore be sustained.

5. It is also necessary to observe that in Appeals Nos. 737 to 739 of 1968 and 13 of 1968 and 1621 of 1968 which arose out of Reference No. 131 of 1961 and other references, decided by this Court on July 25, 1969, the only question of law raised was whether distribution of dividend out of capital gains was taxable. The scope of enquiry in this group of cases, in view of the form of the questions, is more extensive. In Appeal Nos. 737 to 739 of 1968 we held that, having regard to the Explanation to Section 2(6-A) capital gains arising after 31st day of March, 1948 (and before the 1st day of April, 1956) were not part of accumulated profits, and if dividend be distributed to the shareholders of the Company out of those capital gains, to the extent of the distribution out of the capital gains the dividend must be deemed exempt from liability to tax under Section 12 as dividend income liable to tax. In that case we could not consider whether the receipt from the capital gains was still income liable to tax from "other sources" (not being dividend) under Section 12 of the Indian Income-tax Act, for no such question was referred. But that question has been expressly referred to in this case.

6. The order passed by the High Court is therefore set aside and the case is remanded to the High Court for disposal according to law. There will be no order as to costs in this Court. Costs in the

High Court will be costs in the references.

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