

Commissioner of Income-Tax, Andhra Pradesh

Vs

C. P. Sarathy Mudaliar

Civil Appeals Nos. 2242 and 2243 of 1968

(K.S. Hegde, H.R. Khanna JJ)

11.10.1971

JUDGMENT

HEGDE J. -

1. This is an appeal by special leave from a decision of the Andhra Pradesh High Court. The question of law referred to the High Court under section 66(1) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as "the Act"), is : "whether, on the facts and in the circumstances of the case, the amounts of Rs. 5,790 and Rs. 39,085 could be deemed to be the dividend income of the Hindu undivided family in the respective assessment years ?"

The assessee in this case is a Hindu undivided family. From the case stated it is not possible to state definitely as to how many coparceners were there in that family. But, we gather from the case stated that the three of the members of that family, viz., Doraiswamy, Singaram and Sarathy, were shareholders in a private limited company be name "The Chittoor Motor Transport Co. (Private) Ltd." Doraiswamy and Singaram held 100 shares each in that company; Sarathy held 2,797 shares. The Tribunal found that these shares were acquired from out of the family funds. It appears that in the account years relevant to the assessment years 1955-56 and 1956-57 the Chittoor Motor Transport Co. (Private) Ltd. advanced certain loans to the Hindu undivided family of which Doraiswamy, Singaram and Sarathy were considered as "dividends" within the meaning of that expression in section 2(6A) (e) of the Act. The Tribunal found as a fact that the loan in question had been granted to the Hindu undivided family. The assessee contended that the same was taken for making an advance to the Vegetols Ltd. The Tribunal did not examine the correctness of that contention. It was contended on behalf of the revenue before the Tribunal that the loan in question was advanced to the shareholders of the company. The Tribunal repelled that contention. It came to the conclusion that, though the shares were acquired from out of the family funds, in law, the shareholders were Doraiswamy, Singaram and Sarathy and not their Hindu undivided family. Hence, the loan advanced to the Hindu undivided family cannot be considered as loans advanced to the Hindu undivided family cannot be considered as loans advanced to the "shareholders" within the meaning of section 2(6A) (e).

Before the High Court the counsel for the revenue gave up the contention that the loans in question were advanced to the "shareholders" of the company. On the other hand, he contended that those loans had been advanced on behalf of or for the individual benefit of the shareholders. The High Court did not accept that Tribunal, it was not possible to go into that contention. The fact found by the Tribunal did not afford any basis for that contention. In the result, the High Court answered the question referred to it in favour of the assessee.

Before us Mr. B. Sen, the learned counsel for the revenue, took up two contentions. His first contention was that the loans advanced were those advanced to the shareholders of the company. Secondly, he contended that, at any rate, it must be held that those loans were advanced on behalf of or for the individual benefit of the shareholders. He submitted that the counsel for the revenue gave up the first contention before the High Court because of certain decisions of this court and, according to him, those cases cannot be held to have been correctly decided in view of a later decision of this court.

We shall now proceed to examine the two contentions advanced by Mr. Sen. For doing so, we have to read section 2(6A). That section says :

"2. (6A) 'dividend' includes -.....

(e) any payment by a company, not being a company, in which the public are substantially interested within the meaning of section 23A, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf or for the individual benefit of a shareholder, to the extent to which the company in either case possesses accumulated profits;....."

Before a payment can be considered as dividend under section 2(6A) (e), the following conditions will have to be satisfied :

1. It must be a payment by a company not being a company in which the public are substantially interested within the meaning of section 23A of any sum whether as representing a part of the assets of the company or otherwise by way of advance or loan.
2. (a) It must be an advance or loan to a shareholder, or
2. (b) a payment by the company on behalf or for the individual benefit of the shareholder, and
3. to the extent to which the company in either case possesses accumulated profits.

There is no dispute that the first and the last conditions are satisfied in the present case. The question is whether conditions Nos. 2(a) and 2(b) are satisfied. We shall first take up condition No. 2(b). No contention appears to have been taken before the Tribunal that the loans in question were given by the company on behalf of the shareholders or for their individual benefit. That being so, the Tribunal did not go into that question. In fact, as can be gathered from the case stated, the contention of the assessee before the Tribunal was that the loan in question was borrowed for the benefit of another company. But the Tribunal did not go into that question. Under these circumstances, the High Court, in our opinion, was right in not going into that question because on the facts found by the Tribunal it was not possible to decide that contention.

The only surviving question is whether a loan advanced by a company to a Hindu undivided family, which is the real owner of the shares, can be considered as a loan advanced to its shareholder. It is well-settled that a Hindu undivided family cannot be a shareholder of a company. The shareholder of a company is the individual who is registered as the shareholder in the books of the company. The Hindu undivided family, the assessee in this case, was not registered as a shareholder in the books of the company nor could it have been so registered. Hence, there is no gainsaying the fact that the Hindu undivided family was not the shareholder of the company. Mr. Sen did not contend

otherwise.

Section 2(6A) (e) gives an artificial definition of "dividend". It does not take in dividend actually declared or received. The dividend taken note of by the provision is a deemed dividend and not a real dividend. The loan granted to a shareholder has to be returned to the company. It does not become the income of the shareholder. For certain purposes, the legislature has deemed such a loan as "dividend". Hence, section 2(6A) (e) must necessarily receive a strict construction. When section 2(6A) (e) speaks of "shareholder", it refers to the registered shareholder and not to the beneficial owner. The Hindu undivided family cannot be considered as a shareholder either under section 2(6A) (e) or under section 23A or under section 16(2) read with section 18(5) of the Act. Hence a loan given to a Hindu undivided family cannot be considered as a loan advanced to a "shareholder" of a company.

Our conclusion in this regard receives support from the decision of this court. In *Howrah Trading Ltd. Co. v. Commissioner of Income-tax*, this court had to examine the case of a person who had purchased shares of a company under a blank transfer but in whose name the shares had not been registered in the books of the company. The question was whether he could be considered as a "shareholder" in respect of such shares for the purpose of section 18(5) of the Act, because of his equitable right to the dividend on such shares and, therefore, entitled to have that dividend grossed up under section 16(2) by addition of income-tax paid by the company in respect of those shares and claim credit for the tax deducted at the source. This court held that he cannot be considered as a "shareholder", the reason being that he had not been registered as a shareholder.

In *Commissioner of Income-tax v. Shakuntala*, a Hindu undivided family which was the beneficiary of certain shares in a company in which the public were not substantially interested held those shares in the names of different members of the family. The Income-tax Officer applied the provisions of section 23A of the Act (before its amendment in 1955) and passed in order that the undistributed portion of the distributable income of the company shall be deemed to be distributed, and the amount appropriate to the shares of the family were sought to be included, in the income of the family. In that case again this court ruled that the word "shareholder" in section 23A meant the shareholder registered in the books of the company and the amount appropriate to the shares had to be included in the incomes of the members of the family, in whose names the shares stood in the register of the company; and as the Hindu undivided family was not a registered shareholder of the company, that amount could not be considered as the income of the family under section 23A.

From the above decisions it is clear that when the Act speaks of the "shareholder", it refers to the registered shareholder.

Mr. Sen contended that the above two decisions cannot be considered to have laid down the law correctly in view of the decision of this court in *Kishanchand Lunidasingh Bajaj v. Commissioner of Income-tax*. Therein the question was whether a Hindu undivided family could be charged to tax in respect of dividends received by some of the coparceners of that family in respect of shares held by them, those shares having been purchased from out of the family funds. This court ruled that the dividends paid to the shareholders was the income of the family and, that being so, the same was assessable in the hands of the Hindu undivided family. We see no conflict between this decision and the decisions earlier referred to. In the case of actual receipt of dividends there is a receipt of income. That income is received on behalf of the family. Hence, the same was assessable in the hands of the family. In the case of deemed dividends under section 2(6A) (e) the family does not get any income at all. The dividend referred to by that provision is only a deemed dividend and not a

real dividend. Hence, no income is either received by the family or accrued to it. Therefore, only the person who is deemed to have received that income can be assessed in respect of that income.

Coming to the facts of the present case, the loans advanced to shareholders alone can be deemed as dividends. No loans had been advanced to shareholders as seen earlier. Hence, the shareholders did not get any income. Hence, section 2(6A) (e) became inapplicable.

For the reasons mentioned above these appeals fail and the same are dismissed with costs.

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