

M/S. Rameshwari Lal Sanwarmal

Vs

Commissioner of Income Tax, Assam

Civil Appeal No. 133 of 1973

(P.N. Bhagwati, R.S. Pathak JJ)

05.12.1979

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave raises a question of law relating to the interpretation of Section 2(6-A)(e) of the Indian Income Tax Act, 1922. The question is in fact concluded by a decision of this Court in C. I. T. v. C. P. Sarathy Mudaliar (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365), but, it has been argued on behalf of the Revenue that this decision is in conflict with an earlier decision given by this Court in C. I. T. v. Rameshwari Lal Sanwarmal (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28) and hence the question should be referred to a larger Bench. We shall presently consider these two decisions, but we may point out straightway that, in our opinion, there is no conflict between these two decisions and the question is completely covered by the decision in C. I. T. v. C. P. Sarathy Mudaliar (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365). The facts giving rise to the appeal are not in dispute and we may briefly state the same in order to appreciate how the question arises for determination.

2. The assessee is the Hindu undivided family of M/s. Rameshwari Lal Sanwarmal consisting of S. M. Saharia as manager and karta and his wife and a minor son. The assessment year with which we are concerned in the appeal is 1956-57, the relevant accounting year being the year ending Ramnavami Samvat 2012, that is, 18th April, 1956. During this assessment year, the assessee was the beneficial owner of certain shares in a private limited company called Shyam Sundar Tea Co. (P) Ltd. These shares though beneficially owned by the assessee stood in the name of S. M. Saharia in the register of share-holders of the Company. The assessee also owned 3 business concerns, namely, Nilmony Shop, Saharia & Co. and Saharia Industrial Corporation. The Company advanced loans to these 3 business concerns during the relevant assessment year and since it was a company in which the public were not substantially interested, a question arose in the assessment of the assessee to income tax, whether the loans advanced to these 3 business concerns could be regarded as "deemed dividend" of the assessee under Section 2(6-A)(e) of the Act? The Income Tax Officer took the view that the loans advanced to the 3 business concerns were attributable to the accumulated profits of the company to the extent of Rs. 4,48,045 and since the assessee which owned the 3 business concerns was the beneficial owner of the shares standing in the name of S. M. Saharia, the conditions of Section 2(6-A)(e) were satisfied and the loans were liable to be regarded as "deemed dividend" taxable in the hands of the assessee under Section 2(6-A)(e). The assessee preferred an appeal against the order of assessment but the Appellate Assistant Commissioner agreed with the view taken by the Income Tax Officer and held that since S. M. Saharia held shares in the Company as representing the assessee and the loans were advanced to the three business concerns belonging to the assessee out of the accumulated profits of the Company, the Income Tax

Officer was justified in treating the loans as "deemed dividend" under Section 2(6-A)(e) and taxing them in the hands of the assessee. The matter was carried in further appeal to the Tribunal and several arguments were advanced on behalf of the assessee resisting the applicability of Section 2(6-A)(e), but of them, there are two which are material for our purpose and they are : first, that since the assessee was not a registered holder of shares in the company, the loans advanced to the three business concerns of the assessee could not be regarded as loans advanced to a shareholder so as to attract the applicability of Section 2(6-A)(e); and secondly, even if the loans could be treated as deemed dividend under Section 2(6-A)(e), they could be taxed only in the hands of S. M. Saharia, the registered shareholder and not in the hands of the assessee. Both these arguments were negated by the Tribunal and so also were the other subordinate arguments and the appeal was rejected and the assessment confirmed. This led to a reference application by the assessee and on the application, five questions of law were referred by the Tribunal to the High Court. There were, in fact, six questions but for the purpose of the present appeal, it is not necessary to refer to the first question, since it related to the assessment year 1955-56 and it raised a point of limitation which was ultimately decided in favour of the assessee and there is no dispute about it. The other five questions related to the taxability of the loans advanced to the three business concerns of the assessee as deemed dividend under Section 2(6-A)(e) and each of these questions brought in issue different aspects of taxability. It is the first of these questions which is material and we may reproduce it as follows :

Whether on the facts and in the circumstances of the case, and on a true interpretation of the terms of Section 2(6-A)(e) of the Indian Income Tax Act, 1922, the Tribunal was right in holding that the amounts of Rs. 2,21,702 (gross) and Rs. 3,43,505 (net) were taxable as dividends in the hands of the applicant H.U.F. for the assessment years 1955-56 and 1956-57 respectively, when the shares were registered in the name of Sri S. M. Saharia, the karta of the family ?

This question referred to both the assessment years 1955-56 and 1956-57, but we are not concerned in this appeal with the controversy relating to the assessment year 1955-56 and hence we shall confine ourselves only to the assessment year 1956-57.

3. Now two distinct aspects were comprised in this question and both were argued before the High Court. One was whether the loans advanced to the three business concerns of the assessee could be regarded as "deemed dividend" within the meaning of Section 2(6-A)(e) and the other was whether these loans, even if regarded as "deemed dividend" could be taxed in the hands of the assessee. The High Court decided both these aspects of the question in favour of the assessee and held that the word "shareholder" in Section 2(6-A)(e) meant a registered shareholder or in other words, a shareholder whose name is recorded in the Register of the company as the holder of the shares and since the advance in the present case was made to the assessee which was not a registered shareholder, it could not be regarded as "deemed dividend" within the meaning of Section 2(6-A)(e) and that even if it be assumed that the advance was liable to be regarded as "deemed dividend" under Section 2(6-A)(e), it could be taxed as dividend income only of the registered shareholder and not of the assessee. This view taken by the High Court rendered it unnecessary to decide the other four questions and the High Court accordingly declined to consider them. The result of this decision was that the assessment made by the Revenue Authorities was set aside insofar as it included the loans advanced by the Company to the three business concerns of the assessee as deemed dividend and taxed it in the hands of the assessee.

4. The Revenue, being aggrieved by the decision of the High Court, preferred an appeal after

obtaining special leave of this Court. Now it seems that through some inadvertence which is difficult to understand, the Revenue attacked only that part of the order of the High Court which held that the "deemed dividend" could be assessed to tax only in the hands of S. M. Saharia, the registered shareholder and not in the hands of the assessee which was merely the beneficial owner of the shares. Neither in the statement of case filed on its behalf nor in the course of the arguments the Revenue assailed the correctness the view taken by the High Court that since the assessee was not a registered shareholder, loans advanced to the assessee could not be regarded as "deemed dividend" under Section 2(6-A)(e). The result was that the only question that came to be considered by this Court was whether the "deemed dividend" under Section 2(6-A)(e) could be taxed in the hands of the beneficial owner of the shares or it could be brought to tax only in the assessment of the registered shareholder and the view taken was that where the shares acquired with the funds of one person are held in the name of another, it is the former who is assessable to tax on the dividend on those shares and this principle would apply equally to the 'deemed dividend' under Section 2(6-A)(e). This Court did not consider whether the loans granted to the three business concerns of the assessee could at all be regarded as 'deemed dividend' within the meaning of Section 2(6-A)(e) when the assessee was not a registered shareholder and the decision of the High Court to the effect that assessee not being a registered shareholder, the loan advanced to it could not be regarded as 'deemed dividend' under Section 2(6-A)(e) remained undisturbed. Now obviously, so long as the decision of the High Court on this point was not overruled, the question whether the amount of the loans was taxable as deemed dividend in the hands of the assessee could not be answered in favour of the Revenue. But sometimes even Homer nods and through some unfortunate inadvertence for which the counsel appearing on behalf of the assessee in that case must accept full responsibility, this Court discharged the answer given by the High Court in favour of the assessee and in its place substituted an answer in favour of the Revenue. This decision of the Court is reported in *C. I. T. v. Rameshwari Lal Sanwormal* (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28).

5. Since the first question relating to the assessment year 1956-57 was answered by this Court in favour of the Revenue, the reference went back to the High Court for consideration of the remaining questions that had not been answered by the High Court. It appears that at the hearing of the reference the first two out of the remaining four questions were not pressed on behalf of the assessee and only the last two questions were argued before the High Court. Both these questions were considered by the High Court and they were answered in favour of the Revenue and against the assessee. The assessee thereupon preferred the present appeal after obtaining special leave from this Court.

6. There was only one contention advanced on behalf of the assessee in support of this appeal, namely, that the amounts of the loans advanced to the three business concerns of the assessee could not be regarded as 'deemed dividend' within the meaning of Section 26-A(e) since the assessee was not a registered shareholder of the company. This contention was sought to be supported by the decision of this Court in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365). Now there can be no doubt that the decision of this Court in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) lays down that it is only where a loan is advanced by a company to a registered shareholder out of its accumulated profits that it would be liable to be regarded as 'deemed dividend' under Section 2(6-A)(e) and a loan to a beneficial owner of the shares does not come within the mischief of that section and if this decision represents the correct law on the subject, the amounts of loans advanced to the three business concerns of the assessee could not possibly be brought within the net of taxation as 'deemed dividend'. But the argument urged on behalf of the Revenue was that it was not open to the assessee to raise this contention based on the decision in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 :

(1972) 4 SCC 531 : 1974 SCC (Tax) 365), since it was covered by the first question which had already been answered in favour of the Revenue by this Court. The Revenue conceded that this contention was not specifically raised before the Court when the first question came to be considered but it must be held to have been impliedly decided against the assessee, since the first question could not be answered in favour of the Revenue on any other hypothesis. This argument of the Revenue does appear to be very plausible at first blush, but if it is scrutinised closely it will be apparent that it is fallacious and cannot be accepted. The most important circumstance which it ignores is that when the reference was first heard by the High Court, the first question was decided in favour of the assessee on two counts, one was that since the assessee was not a registered shareholder of the Company, the loans advanced to the three business concerns of the assessee could not be regarded as 'deemed dividend' within the meaning of Section 2(6-A)(e) and the other was that even if they could be treated as 'deemed dividend' under Section 2(6-A)(e), they could be taxed only in the hands of S. M. Saharia, the registered shareholder and not in the hands of the assessee who was merely a beneficial owner of the shares. When the Revenue preferred an appeal against the judgment of the High Court, the Revenue should have assailed the decision of the High Court in both its limbs, but through some inadvertence which is difficult to understand, the Revenue challenged only the second limb of the decision ignoring completely the first. The result was that the decision of the High Court that the amounts of loans advanced to the three business concerns of the assessee did not fall within the definition of 'deemed dividend' in Section 2(6-A)(e) remained intact and unaffected by the decision of this Court in the appeal. Now, it is true that this Court could not have answered the first question against the assessee without overruling this part of the decision of the High Court, but through some unfortunate error, this Court set aside the answer given by the High Court in favour of the assessee without considering whether this part of the decision of the High Court was right or wrong. When no contention was raised on behalf of the Revenue before this Court that the decision of the High Court on this point was wrong and that even though the assessee was not a registered shareholder, the amounts of loans advanced to the three business concerns of the assessee were still liable to be regarded as "deemed dividend" under Section 2(6-A)(e) and no such contention formed the subject-matter of discussion before this Court and this Court had, therefore, no occasion to consider this question, it is difficult to see how it can be said merely from the answer given by this Court in favour of the Revenue that this contention was impliedly decided in favour of the Revenue. It would be straining logic to an absurd limit to say that though this contention was not raised, not argued, not discussed and not decided, yet it must be held to have been impliedly decided because, through an error committed by this Court, an answer was given in favour of the Revenue in ignorance of the true position. It would also not be right to hold that merely because this Court erroneously answered the first question against the assessee without considering whether the view taken by the High Court on this point was incorrect, the assessee must be precluded from raising the contention that the assessee not being a registered shareholder, the amounts of loans advanced to the three business concerns of the assessee did not fall within the definition of "deemed dividend" under Section 2(6-A)(e). Why should the assessee, which had the decision of the High Court on this point in its favour and which decision was not assailed by the Revenue in the appeal and which remained undisturbed by this Court, be prejudiced on account of an obvious error committed by the court. The proper way of looking at the decision of this Court would be to regard the answer given in favour of the Revenue to be confined only to the aspect considered and decided by this Court. The only aspect considered by this Court was whether the "deemed dividend" under Section 2(6-A)(e) could be taxed in the hands of the beneficial owner of the shares or it could be assessed to tax only in the hands of the registered shareholder, and this Court held that "deemed dividend" did not stand on any different footing from actual dividend and just as actual dividend was liable to be taxed in the hands of the beneficial owner of the shares, so

also "deemed dividend" must be held liable to be taxed in the assessment of the beneficial owner. This Court did not decide the question whether a loan advanced to a beneficial owner of the shares can be regarded as "deemed dividend" within the meaning of Section 2(6-A)(e) and the answer given by this Court in favour of the Revenue cannot be said to extend to this aspect of the question. We would, therefore, hold that the first question still remains to be answered so far as this aspect of the question is concerned and it is open to the assessee to contend that the amounts of loans advanced to the three business concerns of the assessee could not be regarded as "deemed dividend" under Section 2(6-A)(e), since the assessee was not a registered shareholder.

7. It is also obvious from what we have said above that there is no conflict between the decisions of this Court in *C. I. T. v. Rameshwari Lal Sanwormal* (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28) and *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365). The question whether, on a proper construction of Section 2(6-A)(e), a loan advanced to a beneficial owner of the shares would be liable to be regarded as "deemed dividend" was not raised or argued before this Court in *C. I. T. v. Rameshwari Lal Sanwormal* (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28) and this Court was not called upon to decide it and hence there is no discussion about it in the judgment of this Court nor is there any decision on it. It is only in the subsequent decision on *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) that this question came up for the first time before this Court for consideration and this Court held that when Section 2(6-A)(e) speaks of a "shareholder" it refers to the registered shareholder and not to the beneficial owner and hence a loan granted to a beneficial owner of the shares who is not a registered shareholder cannot be regarded as a loan advanced to a "shareholder" of the company so as to be within the mischief of Section 2(6-A)(e). There is thus no conflict at all between the decisions in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) and *C. I. T. v. Rameshwari Lal Sanwormal* (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28). In fact, Mr. Justice Hegde was a common member of the Bench in both the cases and the subsequent decision in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) was given within less than a month after the decision in *C. I. T. v. Rameshwari Lal Sanwormal* (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28). It is impossible to believe that Mr. Justice Hegde was oblivious of the decision in *C. I. T. v. Rameshwari Lal Sanwormal* (82 ITR 628 : (1972) 4 SCC 342 : 1974 SCC (Tax) 28) when he delivered the judgment in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365).

8. The Revenue lastly contended that the decision in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) is incorrect and we must refer the present case to a larger Bench. Now it is obvious that before we can be persuaded to accede to this request, we must be satisfied that the decision in *C. I. T. v. C. P. Sarathy Mudaliar* (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) is wrong. But having given our most anxious consideration, we find ourselves unable to disagree with the view taken in that decision. What Section 2(6-A)(e) is designed to strike at is advance or loan to a "shareholder" and the word "shareholder" can mean only a registered shareholder. It is difficult to see how a beneficial owner of shares whose name does not appear in the register of shareholders of the company can be said to be a "shareholder". He may be beneficially entitled to the shares but he is certainly not a "shareholder". It is only the person whose name is entered in the register of shareholders of the company as the holder of the shares who can be said to be a shareholder qua the company, and not the person beneficially entitled to the shares. It is the former who is a "shareholder" within the matrix and scheme of the company law and not the latter. We are, therefore, of the view that it is only where a loan is advanced by the company to a registered shareholder and the other conditions set out in Section 2(6-A)(e) are satisfied that the amount of the loan would be liable to be regarded as 'deemed dividend' within the meaning of

Section 2(6-A)(e). The amount of the loan would not fall within the mischief of this section if it granted to a beneficial owner of the shares who is not the registered shareholder. The decision in C. I. T. v. C. P. Sarathy Mudaliar (83 ITR 170 : (1972) 4 SCC 531 : 1974 SCC (Tax) 365) does, in our opinion, lay down the correct interpretation of Section 2(6-A)(e).

9. Now in the present case it was common ground that the loans were advanced to the three business concerns of the assessee which was a Hindu undivided family and this Hindu undivided family was not the registered holder of any shares in the company but it was the beneficial owner of certain shares which stood in the name of the Manager and Karta, Shri S. M. Saharia. The loans were thus advanced to the beneficial owner of the shares and not to the registered shareholder and hence they could not be regarded as loans advanced to a "shareholder" of the company within the meaning of Section 2(6-A)(e). Section 2(6-A)(e) was accordingly not attracted and the amounts of the loans could not be taxed as deemed dividends in the hands of the assessee. We accordingly answer the first question in favour of the assessee so far as this aspect is concerned. In view of this answer to the first question, it is not necessary to consider the other two questions decided by the High Court on remand. The learned counsel appearing on behalf of the assessee, in fact, did not press them.

10. There will be no order as to costs of the appeal.

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