

Rampur Distillery & Chemicals Co. Ltd.

Vs

Commissioner of Income-tax, Lucknow

Civil Appeal No. 1762 (NT) of 1975

(S. Ranganathan, K. Ramaswamy JJ)

21.11.1990

JUDGMENT

K. RAMASWAMY J

1. This appeal by special leave is directed against the finding of the High Court of Allahabad in favour of the revenue and against the appellant to the following question:-

"Whether on the facts and in the circumstances of the case any amount was includible in the assessment of the assessee for the assessment year 1957-58 by way of dividend by reference to the value of the shares of the cement company received by it from sugar companies?"

2. The appellant is a limited company running a distillery. The assessment year in question is 1957-58 and the corresponding previous year is the year ended March 31, 1957. The dispute relates to the income of Rs.77,500/- representing the face value of 7750 shares held by Dalmia Cement Bharat Co. (for short 'the Cement Company') which was received on January 18, 1957 by the assessee company from Raza Sugar Co. Ltd. and Buland Sugar Co. Ltd. (for short 'the sugar company'). The sugar company by the general meeting of the shareholders in the extraordinary general meeting held on January 16, 1951 resolved thus:

"Resolved that a dividend be declared out of profits transferred to the Reserve Fund of the company by the distribution of one fully paid up ordinary share of Dalmia Cement Ltd. held by this Company as its investment against every two shares held by the members of this Company and the Directors are permitted to appropriate the book-value of the investments from the Reserve Fund for this purpose and further the Directors are authorised to issue negotiable certificates in order to meet fractional distribution.

It was further resolved authorising the Directors thus :

Resolved further that for the purpose of giving effect to the above resolution the Directors are authorised to settle any difficulty which may arise in regard to the distribution as they think expedient may vest such specific assets in trustees upon trust for the persons entitled to the Dividend as may seem expedient to the Directors."

3. On the same date, i.e. January 16, 1952, the Board of Directors of the sugar company transferred their holdings of the shares of the cement company to trustees under trust to hold the said shares and the income thereof in the trust for the shareholders of the sugar company whose names appeared on the register of the sugar company as on January 16, 1952 and to distribute amongst the shareholders of the sugar company the said shares in accordance with resolution passed at the extraordinary general meeting of the sugar companies. Pursuant to the above resolution negotiable certificates were also issued. Some of the shareholders of the sugar company thereafter filed company application in the High Court of Allahabad at Lucknow against the sugar company restraining the company or its agents/ servants to give effect to the resolution. The High Court by its order dated February 22, 1952 granted injunction restraining the sugar company or its agents/ servants etc. from acting upon the resolution of the company or from issuing and/ or transferring to the shareholders of the company shares of the cement company and further from getting their names entered into the registers of the cement company as shareholders. The shares in the cement company, therefore, were not transferred in the names of the assessee company etc. immediately. The sugar company in its balance sheets noted that the shares in the cement company included in their investments were held by the trustees for the shareholders for distribution of dividend in specie and the cost of those had to be adjusted out of general reserves in terms of the resolution passed on January 16, 1952 by the shareholders in general meetings of the companies. In view of the injunction order issued by the High Court no further action in this regard was taken topay over to the shareholders of the sugar company. Ultimately the matter was compromised in the beginning of the year 1957 and a decree was passed upholding the validity of the resolution passed on January 16, 1952 and the same had to be given effect to forthwith by issuing and/ or transferring to the shareholders of the sugar company shares of the cement company. Accordingly the shares were transferred to cement company and the assessee company received dividend on January 18, 1957. Initially the assessee included the dividend income in the assessment year 1957-58 but thereafter a revised assessment was filed deleting the amount in question and claiming that the same was to be includable in the assessment year 1952-53 but not in the year 1957-58. The Income-tax Officer included the income in the assessment year 1957-58. On appeal the Appellate Assistant Commissioner upheld the same. On further appeal the Tribunal held that the sugar company irrevocably placed the shares of the cement company with the trustees for being distributed to the shareholders as dividend in specie. The dividend was unconditionally available to the members entitled thereto. If, however, the members themselves chose not to take it, it cannot be said, on that ground, that the dividend was not available to them. Since the dividend had been declared on January 16, 1952 and was unconditionally available to the assessee on that date it was an amount which fell to be taxed in the assessment year 1952-53 and not in the assessment year in which it had been assessed. On a reference the High Court on the impugned date September 18, 1973 held that the shares were not unconditionally available for distribution to the shareholders. The main condition for unconditional distribution was missing i.e. the complete transfer of shares in law either to the trustees or to the shareholders by execution of formal documents of law. It was only after fulfilling this condition the distribution became complete. Actual transfer did not take place in the relevant accounting year but in a subsequent year. The sugar company in its balance sheet was still treating the shares as part of its investment. Therefore, the amount having been received in the previous year, the amount was liable to assessment in the assessment year 1957-58. Thus the question was answered in favour of the revenue and against the appellant.

4. The question, therefore, is whether the income from the dividend was liable to be taxed in the assessment year 1957-58? It is clear from the facts that on January 16, 1952 in the general meeting of the shareholders two resolutions came to be passed declaring the dividend and unconditionally

the dividend in specie had been made over to the trustees on the same day to hold the same in trust for the shareholders of the sugar company whose names appeared on the register of the sugar company as on January 16, 1952. The purpose of the trustees holding the shares in trust was to distribute them amongst the shareholders of the sugar company. As far as the sugar companies are concerned they had unequivocally declared the dividend and set apart the amount towards the shares of the cement company. They had done all that lay in their power to declare and distribute the dividend. They had also, by the subsequent resolution, empowered the Board of Trustees to distribute them amongst its shareholders of the sugar companies whose names appeared on the register of the company on January 16, 1952. In fact negotiable certificates were issued. But due to the objection raised by some of the shareholders by filing company application in the High Court and due to the order of injunction issued by the High Court, the payment of dividend in specie could not be distributed. Ultimately the decree of the High Court uphold the validity of the resolution dated January 16, 1952 and in terms thereof the payments were made on January 17, 1957.

5. From these facts the question is whether the dividend has been irrevocably placed for distribution to the shareholders of the sugar company. Admittedly cement company (appellant company) was one of the shareholders whose names appeared on the register of the sugar company as on that date and the appellant is entitled to receive the dividend of the amount in dispute towards its share from cement company.

6. Sub-section 16(2) of the Indian Income-tax Act, 1922 reads thus:-

"For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him....."

7. Section 16(2) of the Indian Income-tax Act, 1922 prescribed special rules relating to the determination of the previous year in which the dividend is liable to be included in the total income of the assessee. It is provided thereby that for the purpose of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him. The question, therefore, is when declared dividend attracts the operation of S. 16(2) of the Indian Income-tax Act, 1922?

8. In *J. Dalmia v. Commissioner of Income-tax, New Delhi*, (1964) 53 ITR 83: ((1964) 7 SCR 579) the facts are that the interim dividend was declared to the appellant therein on December 28, 1950 the appellant claimed that the declared interim dividend was to be assessed in the assessment year 1951-52. The revenue assessed for the year 1952-53. The assessee claimed that the dividend was taxable in the assessment year 1951-52. While considering the incident of interim dividend considered the scope of S. 16(2) and held that a mere resolution of the Directors resolving to pay, certain amount as interim dividend does not create a debt enforceable against the company, for it is always open to the Directors to rescind the resolution before payment of the dividend. Whether dividend interim or fixed is income taxable in a particular year of assessment must be determined in the light of S. 16(2) of the Indian Income-tax Act. The Legislature had not made dividend income taxable in the year in which it becomes due; by express words of the statute, it is taxable only in the year in which it is paid, credited or distributed or is deemed to be paid, credited or distributed. The Legislature has made a distinct provision relating to the year in which different heads of income become taxable. The year in which a particular class of income becomes taxable must, therefore, be determined in the light of its true character, and subject to the special provision, if any, applicable thereto. The expression 'paid' in S. 16(2) it is true does not contemplate actual receipt of the

dividend by the member. In general, dividend may be said to be paid within the meaning of S. 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. It was accordingly held that the interim dividend is only taxable in the assessment year in which the amount was actually paid. Since the dividend was paid in the previous year and the assessment year being 1952-53 it was accordingly upheld the stand of the revenue. It is thus settled law that if the dividend declared by a company was unconditionally available to the assessee to be paid, it is taxable only in the year in which it is paid, credited or distributed or is deemed to be paid, credited or distributed.

9. This view was reiterated in *Padmavati R. Saraiya v. Commissioner of Income-tax, Bombay City-1*, (1964) 54 ITR (S. Note p. 5): (1965) 1 SCR 307 and *Punjab Distilling Industries Ltd. v. Commissioner of Income-tax, Punjab*, (1965) 57 ITR 1 : (1965) 3 SCR 1 and *Commissioner of Income-tax (Central), Calcutta v. Bikaner Trading Co. Ltd.*, (1970) 76 ITR 12. The settled law, therefore, is that generally the dividend would be said to have been paid within the meaning of S. 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the members entitled thereto. The Legislatures had not made the dividend income taxable in the year in which it became due by express words of the statute. It was taxable only in the year in which it was paid, credited or distributed or was deemed to be paid, credited or distributed. From the facts it is clear that the sugar company had irrevocably placed the shares of the cement company with the trustees for being distributed to the shareholders as a dividend on January 16, 1952. It has also authorised the trustees to distribute to the shareholders by issuing negotiable certificates which have been made ready. But for the order of injunction issued by the High Court at the behest of some of the shareholders the Board of Trustees would have carried out the formal (handing) over the dividend in specie to the respective shareholders. In view of the fact that since the injunction was issued prohibiting the Board of Trustees or their servants from distributing the dividend to the shareholders, they could not complete the distribution thereof. Since the dividend was unconditionally available to the members entitled thereto on January 16, 1952 in specie, it must be deemed to have been paid to the assessee. We may mention that the Delhi High Court in *Commissioner of Income-tax v. Bharat General Reinsurance Co. Ltd.*, (1971) 81 ITR 303 took the same view on the same facts and we hold that the view taken by the Delhi High Court is correct in law. It is undoubted that the sugar company might remain to be owners till the dividend in specie are paid over qua the cement company. But the crucial question is whether the dividend in specie was unconditionally made available for being distributed and if anything was left to the general body of the shareholders to recall the dividend already resolved to be paid. Inasmuch as the general body of the shareholders unconditionally and irrevocably had resolved making over the dividend to the Board of Trustees for being distributed to its shareholders. If any shareholder had called up on the trustees to distribute the shares falling to his share on any date between 16-1-1952 and 22-2-1952-, the trustees would have been obliged to comply with the request. Nothing remained for the general body of the sugar company to recall the dividend. In fact the validity of the resolutions were upheld by the High Court in the compromise decree. The action of the sugar company to show in their balance sheet the declared dividend as the asset does not have the effect of recalling the valid resolution already passed making available unconditionally the dividend for distribution to the shareholders as part of its trading activity.

10. Accordingly we hold that the High Court committed a clear error in its holding, that the amount in question is includible in the assessment year 1957-58. We have no hesitation to hold that the company must be deemed to have paid, credited or distributed to its shareholders of the sugar company, and the dividend income of the assessee fell to be taxed in the assessment year 1952-53 and not in the assessment year 1957-58. The reference is answered in favour of the assessee and

against the revenue. The appeal is accordingly allowed but in the circumstances parties are directed to bear their own costs. Reference answered in favour of assessee

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