

# **SUPREME COURT OF INDIA**

Income-Tax Officer

Vs.

S. Radha Krishnan

(S Bharucha and D Mohapatra JJ.)

10.12.1998

## **ORDER**

1. The respondent has been served but does not appear. The respondent objected to the inclusion of a sum of Rs. 34,375 representing the gross dividend from a company called BMS Private Limited for the assessment year 1972-73. The assessee's case was that, by virtue of Section 104 of the Income-tax Act, 1961, the said amount had already suffered tax because it was undistributed profits in the hands of the company ; when it was distributed to the company's shareholders thereafter, the levying of further tax thereon amounted to double taxation. The objection was rejected by the authorities, whereupon a writ petition was filed before the High Court. By the order under appeal, a learned single judge upheld the case of the assessee on the basis that taxation of the same amount in the hands of the company and the shareholder amounted to double taxation.

2. The learned judge was in error. The question of double taxation must be decided having regard to who the assessee is. If the assessee is different, the question of double taxation would not arise. In the present case, the fact that the company had been made liable to tax on the amount did not mean that that amount, when paid as income to the shareholder, could not be taxed as income in the hands of the shareholder. The character of the amount changed, it being now the income of the shareholder.

3. In the premises, the appeal is allowed. The judgment and order under appeal is set aside. The writ

petition filed by the respondents in the High Court is dismissed. No order as to costs.