

# ANDHRA PRADESH HIGH COURT

Lagadapati Subba Ramaiah

Vs.

Commissioner of Income-Tax

Case Ref. No. 20 of 1955

(Subba Rao, C.J. and Viswanatha Sastri, J.)

24.02.1956

## JUDGMENT

**Viswanatha Sastri, J.**

1. The question referred to us for decision is : "Whether in the circumstances of this case, the petitioner is not entitled to the refund of tax in respect of the two dividends in question?" The facts are these. The assessee, Lagadapati Subba Ramayya, was a partner of a registered firm "Umamaheswara Motor Service" which was a share-holder of a private limited company styled "The Nellore Bus Transport Co., Ltd." According to the books of the company, its profits for its entire period of existence, that is to say, for the years of account ending with 31st December, 1946; 31st December, 1947; 31st December, 1949 and 11th May, 1949 amounted in all to Rs. 34,532. The revenue authority declined to accept the books of the company and estimated its income at a much higher sum on which tax to the tune of Rs. 62,000 was assessed and paid. The company purported to issue dividend warrants to its share-holders aggregating to a sum of Rs. 1,16,280. The assessee stated that he got dividends of Rs. 6,800 and Rs. 4,800 for the account years ending with 31st December, 1946 and 31st December, 1947 respectively, the dividends having been declared by the company on 2nd March, 1949. The assessee, however claimed a refund on the basis of only one dividend warrant dated 9th June, 1949 for Rs. 6,800. The Income-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal all rejected the claim of the assessee to a refund. These authorities took the view that after the payment of the Income-tax of Rs. 62,000 levied on the company there were no funds available with it out of which the dividends could have been declared and paid. The appellate Assistant Commissioner concluded his order thus :-

"In the absence of evidence to show that there were sufficient accumulated profits for the payment of dividends, the only inference that could be drawn is that there was no payment of dividends at all or that the dividends, if actually paid, had come

out of capital."

The Appellate Tribunal also took the view that there was no proof of the receipt of the dividends by the assessee from the company either in cash or by adjustment. The accounts of the company were not forthcoming on the plea that they had been destroyed on its liquidation. The Tribunal observed :-

"In this case it happens that the company on whose dividend warrants refund is now claimed had during the four years during which it was in existence declared an income of Rs. 34,532. The books of company were not accepted by the department and estimates were made, which ultimately resulted in the levy of taxes amounting to Rs. 62,000.

These taxes were all paid. Even so, the company had issued dividend warrants to its shareholders for Rs. 1,16,280. It seems to us that the Income-tax Officer was right in his view that there was clear evidence to show that the company did not have the wherewithal to declare and pay dividends." A further reason given by the Appellate Tribunal, for rejecting the assessee's claim for refund was as follows :

"In making the return the assessee did not show the dividend he received from the company. This is another circumstance to show that there is no proof of the assessee having received the dividends."

In our opinion, the assessee's case fails on this ground.

2. A dividend involves a distribution of the company's current or accumulated profits and a company cannot pay dividends otherwise than out of such profits" Under Section 16 (2) of the Income-tax Act, a dividend is deemed to be the share-holder's income of the year in which it is paid, credited or distributed regardless of when the profits out of which the dividend is paid were earned by the company. A company is a corporate body distinct from the shareholders and under the Income-tax Act, is chargeable to tax on its profits as a distinct taxable entity. The company pays tax in discharge of its own liability and not on behalf of or as agent for the share-holders. The share-holder himself is taxable on the dividends which he must include in his total income. Under Section 49-B of the Act when a dividend is paid to a share-holder by a company which is assessed to tax, the income-tax in respect of such dividend is deemed to have been paid by or on behalf of the share-holder at the date applicable to the total income of the company. As the income-tax in respect of the dividend is deemed, under Section 49-B to have been paid by the company on behalf of the shareholder, credit for the tax is given to the shareholder in his assessment under Section 18 (5) of the Act. Not only is the share-holder not liable to pay income-tax again on the dividend but he is entitled to claim a refund under Section 48 if the maximum rate of income-tax with which companies are charged, is not applicable to him. If the dividend has been paid partly out of profits which have not been charged to tax in the hands of the company, then under Section 16 (2) proviso, the credit given to the share-holder in the

assessment under Section 18 (5) is calculated upon the proportion which the company's taxable profits bear to its total profits.

3. It will be clear from what has been stated above that the right of a share-holder to a refund of the tax on dividends paid by a company is purely a statutory right hedged in with conditions which have to be fulfilled. This is made clear by Section 49-B which provides that income-tax on company's dividend shall be deemed to have been paid by the share-holder, if the dividend is included in his total income. The effect of this provision is that if the dividend is not included in the return of his total income by the share-holder, he would not be deemed to have paid the tax in respect of such income and would not be entitled to claim a refund under Section 48 in respect of such tax. That is the position in this case.

4. Before parting with the case, we should like to add that we must not be understood as agreeing with the reasoning of the Tribunal in its entirety. It is true that the mere production of a dividend warrant together with a certificate of the company that tax has been paid on its profits does not entitle the share-holder to a refund of tax. The revenue authority can call upon the share-holder to prove that the dividend has in fact been paid, credited or distributed and for this purpose it may be material to inquire whether there were any current or accumulated profits of the company taxable in its hands out of which the dividend could have been paid. In the present case, it is somewhat difficult to say that there were no profits of the company out of which a dividend could have been paid. When the revenue authority levied a tax of Rs. 62,000 on the company, it proceeded on the basis that the books of the company which showed a total income of only Rs. 34,532 for all the four years of its existence were unreliable and that the bulk of the company's profits had been kept outside its books. Now those secret profits less the income-tax paid therefrom would be available with the company for distribution as dividends. Once the secret profits had been assessed to tax, it would have been open to the company to bring those profits into the books and distribute them or what remained after payment of tax, as dividends. In view, however, of the levy of Rs. 62,000 as tax on the company, its secret profits should have been in the region of more than a lakh and a half rupees. Subject to the provisions of the Act, the revenue authority has to act in a fair and consistent manner. Having assessed the company on a large sum as its undisclosed income, it cannot at the same breath, say that these profits did not in fact exist because they did not appear from the company's books and could not therefore have been available for the payment of dividends. Among common men, such an attitude, would be regarded as blowing hot and cold or playing fast and loose. It is regrettable that the books of the company have been withheld and the manner in which the funds, out of which the dividends are said to have been distributed, were made up is not disclosed. The company is a private limited company and it is difficult to believe that its books are beyond the control of the assessee. It is unnecessary to pursue this aspect of the case further in view of the assessee's non-compliance with Section 49-B of the Act find his omission to include the dividend in his total income.

5. The answer to the question referred is that the assessee is not entitled to the refund of tax in

respect of the dividend. The assessee will pay the costs of the Commissioner of Income-tax.  
Advocate's fees Rs. 250.  
Answer in negative.