

CALCUTTA HIGH COURT

Bikaner Trading Co

Vs

Commissioner of Income-Tax

(Chakravartti, C. J.)

15.06.1953

JUDGMENT

Chakravartti, C. J.

1. This reference has been attended with circumstances extremely unsatisfactory, both so far as the Tribunal is concerned and so far as the assessee who obtained the reference is concerned. The assessee is an unregistered firm, resident and ordinarily resident in India. The assessment years in question are 1947-48 and 1948-49. In the first of the two assessment years, the assessee showed a net dividend income of Rs. 69,275 and in the second of the two years it showed a dividend income of Rs. 74,042. As to the shares upon which the said dividend amounts had been received, the assessee company could establish the ownership of only a few which accounted for a net dividend of Rs. 117-3-0 out of the sum of Rs. 69,275 for the assessment year 1947-48 and a few more which accounted for a dividend income of Rs. 140-10-0 out of the sum of Rs. 74,042 for the assessment year 1948-49. The Income-tax Officer refused to gross up the rest of the dividend income on the ground that as the assessee had not proved itself to have been the holder of the shares concerned at the time the dividend was declared, it was not entitled to the benefit of Section 18 (5) of the Act. That decision of the Income-tax Officer was upheld by the Appellate Assistant Commissioner and on further appeal by the Tribunal. Before the Tribunal it appears to have been contended that the shares in respect of which the Income-tax Officer had refused to give the assessee any credit did in fact belong to the assessee and were being held as security by the Hongkong & Shanghai Banking corporation against some overdraft allowed to the assessee. This contention was sought to be proved by reference to a certificate said to have been issued by the bank on 17th January, 1949, and a subsequent letter written by the bank on 29th December, 1949. The certificate was said to have been produced before the Income-tax Officer and the letter before the Appellate Assistant Commissioner. The Tribunal said in the course of its appellate order that no trace of either the certificate or the letter could be found on the records and it is quite obvious that it did not accept the assessee's case that any such material had been produced before the officers concerned. In the end the Tribunal recorded its finding in the following words :-

"We therefore have come to the conclusion that the shares in question continue to stand in the names of the original holder who sold these to the appellant."

This finding was arrived at after the Tribunal had examined some of the dividend warrants and found them to stand in the names of strangers. Curiously enough, when the application for a reference to this Court came to be heard the issue as to the ownership of the shares seems to have been reagitated and the two members of the Tribunal who signed the statement of the case say that the assessee's case that the shares had been lodged as security with the Hongkong and Shanghai Banking Corporation had been confirmed by the bank by their letters of 17th January, 1949, and 29th December, 1949, and that it was not disputed that such was the position. How the two members of the Tribunal who composed the statement of the case could have made that statement, it is impossible to see. It is perfectly opposed to the statement in the appellate order itself and one does not understand how, if the certificate of 17th January, 1949, and the letter of 29th December, 1949, were not on the record at all, they could yet be looked at and found to confirm the assessee's case. Then again in the appellate order the Tribunal had relied upon the decision of the Bombay High Court in the case of *Shree Shakti Mill Ltd. v. Commissioner of Income-tax, Bombay city*¹ The statement of case, however, solemnly states that the Tribunal relied on the case of Commissioner of Income-tax, *Bombay City v. Bai Navajbai N. Gamadia*² which, by the way, has nothing whatever to do with the question which was raised before the Tribunal and which has been referred. We have so far endured with patience the type of statements of cases which have been submitted to this Court in connection with the reference that have come up this session, but we think that the limit has been passed and we ought to make some observations. One common feature of these statements of cases is that the appeal was heard by Mr. S. M. Gupta and Mr. B. M. Chatrath, whereas the statement of the case in almost every case was drawn up by Mr. B. M. Chatrath and Mr. A. R. Agarwal. In drawing up the statement, they do not seem to have always considered it necessary to refer to the appellate order, nor necessary to be exact in the statements they made, nor necessary to make a full statement of the relevant facts. Most of the Statements of cases are sketchy in the extreme and, were one to rely upon them alone, it would be impossible to answer any question at all. It has been a frequent experience this session to find two members of a Tribunal deciding a particular case in a particular manner and one of those members, acting with a third member, stating a case for this Court which differed materially from the case made and found at the hearing of the appeal. We shall not say, out of respect for the Tribunal, that the members have acted in a careless manner, but we feel bound to say that the manner in which they have discharged their duty of drawing up statement of cases for this Court can only be called care free. Reverting now to the facts of the present case, the question which has been referred is as follows :-

"Whether on the above facts and in the circumstances of this case the assessee is entitled to claim rebate under Section 18 (5) of the Indian Income-tax Act in respect of the balance of Rs. 69,155 and Rs. 73,902 in the assessment years 1947-48 and 1948-49 respectively? "

The assessee who caused the reference to be made never entered appearance in this court and is neither present before us, nor represented. In those circumstances, we have heard Mr. Meyer on behalf of the Commissioner of Income-tax and formed our opinion from an examination of the material on the record and the submission which Mr. Meyer made. On the findings of the Tribunal, the question simply is whether X can claim the benefit of Section 18 (5) of the Income-

tax Act in respect of dividend amounts paid on shares standing in the name of Y. One has only to refer to the provisions of Section 18 (5) to see that a stranger to a share cannot claim the benefit of Section 18 (5) in respect of the dividend paid it. The section speaks of "any sum by which a dividend has been increased under sub-section (2) of Section 16, " and proceeds to say that such sum "shall be treated as a payment of income-tax on behalf of..... the shareholder." The "shareholder" contemplated by the section is obviously the holder of the shares and the holder of the shares is the person whose name stands registered in the share register of the company concerned. He alone is the shareholder in the eye of the company and it is to him alone that the dividend on the shares can be paid. If then Section 18 (5) provides that the sum by which a dividend amount is grossed up shall be treated as payment of tax on behalf of the shareholder, it only provides that the credit for the payment can be claimed by the person who stands registered for the time being as the holder of the shares and by him alone.

It appears to have been contended before the Tribunal that the shares were now being held partly by nominees of the bank and partly by nominees of the assessee and that such nominees were the present registered holders. The Tribunal disbelieved that case, as I have already stated, and pointed out further that up to the stage of the appeal before it the assessee's case had always been that shares were still standing in the names of the original holders. The simple question which arises out of the facts, therefore, is whether the assessee can claim the benefit of Section 18 (5) in respect of these shares, if they still stand in the names of the original holders, although the assessee may somehow have come to possess them or become their purchaser without becoming the registered holder. For the reasons I have already given, the benefit of Section 18 (5) is limited to the registered holder and does not extend to an unregistered purchaser. Mr. Meyer drew our attention to two decided cases one of which had been relied upon by the Tribunal at the hearing of the appeal. That decision is the decision of the Bombay High Court in the case of *Shree Shakti Mills Ltd. v. Commissioner of Income-tax, Bombay City*³ The other decision is the decision of the Nagpur High Court in the case of *Jaluram Bhikulal Firm of Itwara v. Commissioner of Income-tax Madhya Pradesh*⁴ In both of the case it was held that the "shareholder" mentioned in Section 18 (5) of the Income-tax Act was the person who owned certain shares and who was shown as a shareholder in the register of the company and it was only the shareholder of a company to whom the dividends were paid who was entitled to the procedure of grossing permissible under Section 16 (2) and Section 18 (5). The reasons in support of that view are given broadly in the Bombay decision and more closely and elaborately in the decision of the Nagpur High Court. We see no reason to dissent from the view taken in the cases referred to by Mr. Meyer. For the reason given above, the answer to the question referred must, in my opinion, be in the negative. The Commissioner of Income-tax will have his costs of this reference.

LAHIRI, J.-I agree

Reference answered in the negative.

Cases Referred.

1([1948] 16 ITR 187 at p. 191)

2([1948] 16 ITR 109)

3([1948] 16 ITR 187)

4([1952] 22 ITR 490)