CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Darbhanga Marketing Co. Ltd

(Deb, C.J. Sabyasachi Mukharji, J.)

14.04.1969

JUDGMENT

Sabyasachi Mukharji, J.

1. This reference arises out of the assessment for the assessment year 1962-63, for which the previous year is the year ending on the 31st March, 1962. The assessee is accompany mainly deriving income from dividends. The assessee filed a return of income declaring business loss of Rs. 20,905 and income from other sources of Rs. 1,76,584. The Income-tax Officer found that the gross amount of dividend amounted to Rs. 1,76,584 and allowed deduction of Rs. 21,326 being interest paid to various parties on moneys borrowed in connection with investments. The Income-tax Officer then worked out the chargeable dividend income at Rs. 1,55,258 inasmuch as the assessee was entitled to exemption under Section 89(1)(ii) (sic. 99(1)(iv), of the Income-tax Act, 1961, the Income-tax Officer worked out the gross amount of dividend income exempt under that Section at Rs. 85,201 and reduced it by a sum of Rs. 10,290, being the amount paid in so far as it was attributable to the aforesaid dividend income. The Income-tax Officer, therefore, worked out that as against the gross amount of dividend of Rs. 85,201, the assessee was entitled to exemption under Section 99(1)(iv) of the said Act only in respect of Rs. 74,911.

2. There was an appeal before the Appellate Assistant Commissioner. It was contended that exemption from super-tax under Section 99(1)(iv) of the Income-tax Act, 1961, was limited to the amount specified in the sub-section in so far as they were included in the total income. Since the amount of dividend exempt under Section 99(1)(iv) of the Income-tax Act, 1961, included in the income was only Rs. 74,911 as worked out by the Income-tax Officer, the Appellate Assistant Commissioner upheld the order of the Income-tax Officer.

3. The assessee preferred a further appeal before the Tribunal. The Tribunal held that Section 99(1)(iv) of the Income-tax Act, 1961, conferred exemption from super-tax in respect of "any dividend received" by the assessee-company and not in respect of "any dividend income". The

Tribunal, therefore, held that as the dividend received by the assessee covered by Section 99(1)(iv) was Rs. 85,201, the relief was not liable to be reduced merely because the "dividend income" after deduction of interest of money borrowed for earning the said dividend would be worked out at a lesser figure. The Tribunal, therefore, held that the assessee was entitled to relief on the whole of the amount of dividend it received and not on the said amount received by interest on money borrowed for earning the said dividend. The Tribunal, therefore, allowed the appeal.

4. On an application being made, the Tribunal has referred the following question to this court under Section 256(1) of the Income-tax Act, 1961 :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to relief under Section 99(1)(iv) of the Income-tax Act, 1961, in respect of Rs. 85,201 and not on the said amount reduced by Rs. 10,290 being interest on money borrowed for earning the said dividend?"

5. Mr. B. L. Pal, learned counsel for the revenue, contended that Section 99 of the Act under which this question has been decided is in Chapter II with the heading "Income forming part of the total income on which no supertax is payable". Mr. Pal contended that income which formed part of those incomes have been computed in accordance with the provisions of the Act, According to the learned counsel for the revenue in the computation of the total income only the net dividend has been considered and not the gross dividend earned by the assessee. It is, therefore, clear that by that provisions of Section 99 what was to be exempted from super-tax was the net dividend and not the gross dividend. Therefore, whatever amount was exempted as expended for earning the dividends should be deducted to arrive at the dividend income over which super-tax should not be calculated under Section 99 of the Income-tax Act, 1961. Mr. Pal drew our attention to the various provisions of the Indian Income-tax Act, 1922, namely, Section 2(15), Section 6, Section 12(1A), Section 12(2), Section 16, Section 4 (3)(i) and Section 14 of the Indian Income-tax Act, 1922. He also drew our attention to the provisions of Section 2(45), Section 56 and Section 66 of the Income-tax Act, 1961. Mr. Pal also drew our attention to the decision of the Bombay High Court in the case of *Ambika Silk Mills Co. Ltd. v. Commissioner of Income-tax*[1], There it was held that under Section 17(7) of the Indian Income-tax Act, 1922, the relief to which a company was entitled in respect of super-tax was on the amount which was included as income chargeable under the head of "Capital gains". Consequently, when the total income in any year of a company consisted entirely of a residue of capital gains remaining after set-off against the total capital gains of that year of loss from business, the amount by which the super-tax payable by them should be reduced should be computed on the total amount of the capital gains and not on the residue of capital gains remaining after set-oil. In view of what the

Bombay High Court were considering and the language of the present provision, we do not think that it will be relevant to discuss the case in detail. The next case relied on by Mr. Pal was the decision of the Calcutta High Court in the case of *Commissioner of Income-tax v. Samnugger Jute Factory Co. Ltd.*[2], where it was held that the words "any sums" in Section 15B(1) of the Indian Income-tax Act, 1922, must be sums assessable in their nature, being parts of the assessable income of the relative accounting year and sums brought into the assessment and brought to charge. Consequently, it was held that there could be no question of granting an exemption under Section 15B in respect of a contribution to the Gandhi National Memorial Fund, if the sums representing the contribution were not part of the income assessable for the year at all. Chakravartti C. J. observed at page 274 of the judgment :

> "Those words are, as I have already said, 'the tax shall not be payable by an assessee, etc.' It follows that if the exemption is to be asked
> for in respect of 'any sum' that must be a sum about which it is possible
> to say that the tax shall not be payable upon it which can be possible only
> if it is a part of the income of the year and is liable to tax."

6. The next case relied on by Mr. Pal was a decision of the Supreme Court in the case of Commissioner of Income-tax v. Manilal Dhanji , . Mr. Pal relied on the judgment, at page 881, where the Supreme Court has observed:

> "We shall presently read Section 16(3), but before we do so it is necessary to refer to the scheme of Section 16 of the Income-tax Act. The section deals with the computation of total income as defined in Section 2(15) of the Act, and provides what sums are to be included or excluded in determining the total income. The definition of total income in Section 2(15) involves two elements--(a) the income must comprise the total amount of income, profits and gains referred to in Section 4(1), and (b) it must be computed in the manner laid down in the Act."

7. Mr. Pal drew inspiration from this passage in support of his argument that anything which was not entered into the computation of the total income cannot merit calculation in determining the exemption from supertax as contemplated under Section 99 of the Income-tax Act, 1961. The next case on which reliance was placed by Mr. Pal was the decision of the Supreme Court in the case ofNalinikant Ambalal Mody v. S. A. L. Narayan Row, Commissioner of Income-tax, . Mr. Pal relied on this decision of the Supreme Court for the argument that there is no warranty for the assumption that whatever is included in the total income under Section 4 must be liable to tax. Section 3 does not provide that the entire total income shall be chargeable to tax. It says that the chargeability of the income has to be in accordance with and subject to the provisions of the Act.

The income has, therefore, to be brought under one of the heads in Section 6 of the Act and can be charged to tax only if it is so chargeable under the computing section of that Act. Mr. Pal contended that to hold contrary to his submission would amount to giving double relief to the assessee, which according to him was not warranted by the provision of the statute.

8. Dr. Devi Prasad Pal, learned counsel for the assessee, on the other hand, contended that on a proper and strict interpretation of the language of the provision it would be manifest that relief was contemplated under Section 99(1)(iv) of the said Act in respect of dividend received. To exclude from the dividend something which the assessee has received would be contrary to the express provision of the language of the statute. He further submitted that if the revenue's contention is accepted in respect of the other sub-clauses of the same section, it would result in anomalies. In respect of the heading, he urged that the expression "income forming part of the total income" was descriptive of the heads of the income included in the total income of an assessee in respect of which exemption was being granted and was not meant to indicate the quantum of income included. Dr. Pal drew our attention to the decision of the Supreme Court in the case of Commissioner of Income-tax v. South Indian Bank Ltd, . He particularly referred to the passage at page 766 where the Supreme Court has observed:

> "The expression 'interest receivable on income-tax free loans' is clear and unambiguous..... 'Interest receivable' can only mean the amount of interest calculated as per the terms of the securities. It cannot obviously mean interest receivable minus the amount spent in receiving the same"

9. It has to be observed, however, that Mr. B. L. Pal made some argument to the effect that that case has to be understood specially under the notification which fell for consideration before the Supreme Court in respect of that case. Dr. Pal also drew our attention to the decision of the Bombay High Court in the case of Commissioner of Income-tax v. Industrial Investment Trust Co. Ltd., [1968] 67 I.T.R. 436 (Bom.) The said decision of the Bombay High Court, however, was mainly based on the decision of the Supreme Court referred to hereinbefore.

10. It is relevant at this stage to set out the relevant provisions of the Act. Section 99 with which we are concerned as mentioned hereinbefore, is in Chapter XI of the said Act and is in the following terms:

"B--Incomes forming part of total income on which no super-tax is payable.

99. Incomes not chargeable to super-tax--(1) Super-tax shall not be payable by an assessee in respect of the following amounts which are included in his total income--

(i) if the assessee is a partner of an unregistered firm, any portion of the assessee's share in the

profits and gains of the firm computed in the manner laid down in Section 67 on which super-tax has already been paid by the firm;

(ii) if the assessee is a member of an association of persons or any other body of individuals, any portion of the amount which he is entitled to receive from the association or body, on which super-tax has already been paid by the association or body, as the case may be;

(iii) any dividends received by assessee from a co-operative society as a member thereof;

(iv) if the assessee is a company, any dividend received by it from an Indian company, subject to the provision contained in the Fifth Schedule...."

11. The relevant sub-clause which falls for consideration in the instant reference is Sub-clause (iv) of Section 99 (1) of the said Act which exempts any dividend received by it from any Indian company, subject to the provisions contained in the Fifth Schedule. The Fifth Schedule provides that the super-tax shall not be payable "by any company in respect of any dividend which is assessable for the assessment year commencing on the 1st day of April, 1962, upon certain terms and conditions.

12. In order to merit exemption from super-tax the amount must clearly come within the provisions of the section dealing with that exemption, namely, Section 99 of the said Act. Provisions of this nature must receive strict construction. Bearing that in mind, it is manifest, in our opinion, that under Section 99, super-tax shall not be payable by an assessee in respect of the "amounts" of "any dividend received by it". Therefore, it means the amount of dividend received by the assessee. It cannot mean dividend received minus the amount of interest on moneys borrowed for earning the same. The expression "which are included in his total income" in Sub-section (1) of Section 99 and "incomes forming part of total income" in the heading are descriptive of the items included in the computation of the total income and not indicative of the quantum of the amounts included under the different items in the computation of total income. Such a construction of these expressions would be in harmony with the obvious meaning of these expressions "dividend received". Any other construction would result in an anomaly. The construction we have reached is in consonance with the scheme of the section and from one point of view with the purpose behind it. It is true from another point of view for it amounts to excessive relief to an assessee. But that is a matter of legislative policy. In view of the language used we are not concerned with the same. We are further of the opinion that the ratio of the decision of the Supreme Court in the case of Commissioner of Income-tax v. South Indian Bank Ltd. supports the above view we are taking. In view of the fact that the language used in Section 15B(1) of the Indian Income-tax Act, 1922, is "any sum" which is different from the expression "incomes" in Section 99(1), we are of the opinion that the observations of Chakravartti C. J. in

the case of Commissioner of Income-tax v. Samnugger Jute Factory Co. Ltd., cannot be availed of in aid of the revenue.

13. The question is, therefore, answered in the affirmative and in favour of the assessee. The Commissioner of Income-tax will pay the costs of this reference.

Deb, J.

14. I agree.

Cases Referred.

1[1952] 22 I.T.R. 58 (Bom)
2[1953] 24 I.T.R. 265 (Cal)