

BOMBAY HIGH COURT

Shree Shakti Mills Ltd

Vs

Commissioner of Income-Tax

(Chagla, C.J)

15.03.1948

JUDGMENT

Chagla, C.J

1. The assessee, which is a company, purchased certain shares during the accounting year and in respect of those shares received an amount of Rs. 3,628 representing dividends paid on those shares. In the return which they made they claimed that this sum of Rs. 3,628 be processed in terms of Sections 16(2) and 18(5) of the Income-tax Act. The assessee was called upon to produce the relevant certificates issued by the companies concerned under Section 20 of the Act. The assessee failed to produce the certificates as they had not been registered by the company in their books as the shareholder in respect of these shares. Thereupon the taxing authorities refused to grant to the assessee the rights and concessions permissible under Section 18(5) and Section 16(2) of the Act. The question submitted to us is, whether in the absence of a certificate under Section 20 the assessee's claim in respect of Rs. 3,628 under Sections 18(5) and 16(2) can be validly entertained. Before we consider the question of the certificate under Section 20, a more fundamental question arises as to the right of the assessee to claim any relief under Section 16(2) and 18(5), the principle is fairly clear. Dividends received are not dividends and they are paid after the company has paid the tax on its profits. In order to avoid double taxation, the law permits the assessee to gross up the net dividend and to show under Section 16(2) what was the gross income as against the net income represented by the dividend. Then, under section 18(5) the assessee is entitled to deduct the tax paid by the company on this gross amount. Section 16(2) speaks of dividends being paid, credited or distributed to the assessee. It is clear that the dividend can only be paid by a company and it can only be paid to its registered shareholder. If there were any doubt as to the construction of Section 16(2), which in my opinion there is none, that doubt is removed when one looks at the language of Section 18(5) which expressly uses the expression "shareholder." Mr. Somjee says that a shareholder is not a registered shareholder but a person who is the owner of the shares. It is impossible to accept that contention. A shareholder can only

have one legal connotation. He is the person who owns certain shares and who is shown as a shareholder in the register of the company. In this case the real position in law was that the assessee purchased the shares and did not get itself transferred in the books of the company as the shareholder. Therefore, the shareholder from whom the shares were purchased received the dividend from the company and qua the assessee the shareholder became a bare trustee with regard to the dividend received by him and the shareholder could be liable to pay to the assessee an amount representing the dividend from the registered holder of the shares. Therefore, in my opinion, it is only the shareholder of a company to whom dividends are paid who is entitled to the procedure of processing permissible under Section 16(2) and Section 18(5). A person who buys shares or who comes in possession of shares without getting himself transferred in the books of the company and without becoming a shareholder and without being entitled to dividends cannot avail himself of the procedure laid down under these two sections. In this view it is unnecessary to decide whether the law lays down only one mode of proof as to whether tax has been paid by the company on the dividend paid to its shareholders. Section 20 refers to the certificate which has to be given by the principal officer of every company at the time of the distribution of dividends to the effect that the company has paid or will pay income-tax on the profits which are being distributed and specifying such other particulars as may be prescribed. Mr. Somjee has contended that the law does not preclude the assessee from proving alienated that in fact the company has paid the income-tax even though he may not be in a position to prove that fact by producing the certificate mentioned under Section 20. But the question is academic because, if it is only a shareholder who is entitled to the procedure laid down under Section 16(2) and Section 18(5), then the shareholder who received dividend would always receive a certificate under Section 20. The difficulty arises in the way of Mr. Somjee because he is not a shareholder. He has not been paid the dividend and therefore obviously he has not been given the certificate by the company. I would therefore answer the question in the negative. Assessee to pay the costs. Notice of motion dismissed with costs.

Tendolkar J.

This reference arises out of the assessment for the year 1945-46. During this year, the assessee received several amounts totaling Rs. 3,628 representing dividends on shares purchased by them which had not till then been transferred to their names in the books of the respective companies. The assessee claimed that in respect of these dividends the provisions of Section 16(2) should have been applied and these dividends increased in the manner therein provided should have been included in their income and that the provisions of Section 18(5) should also have been applied and the income-tax deducted by the companies from these dividends should have been treated as income-tax paid on their behalf. The question for determination, therefore, in the first instance is whether the assessee is entitled to the benefits of Section 16(2). The position of the assessee in law, at the date of the assessment, was that they were purchasers of their respective

shares, and the shareholders who had sold these shares to them were under a liability to pay the assessee an amount equivalent to the amount of the dividend received by them on their respective shares. It is by reason of this right in their favour and this obligation on the part of the shareholders that the assessee received the amounts representing dividends totaling Rs. 3,628. Section 16(2) states :-

"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."

There are two conditions that must be fulfilled before Section 16(2) can be invoked. The first is that dividend must be paid by the only person who can pay it, viz., the company. The second is that it must be paid to the assessee. It is not enough that an amount equivalent to the dividend comes into the possession of the assessee through the intervention of a shareholder. Neither of these two conditions is satisfied in the present case. There is no payment whatever by the company to the assessee. The payment if any was made by the company to the shareholder himself; and the shareholder in his turn paid an equivalent amount to the assessee before us. In my opinion, therefore, Section 16(2) has no application to the facts of this case. I am strengthened in coming to this conclusion by the words specifically employed in Section 18(5). The relevant portion of that sub-section for the purposes of this reference is : "any sum by which a dividend has been increased under sub-section (2) of Section 16 shall be treated as a payment of income-tax on behalf of the shareholder." Those words make it perfectly plain that the person to whose income certain amounts have to be added under Section 16(2), in addition to the dividend, is the shareholder and no other. In my opinion, therefore, the assessee in the present case are not entitled to the benefit of either of those sections. Another question that is mentioned in the reference is, whether the assessee having failed to produce a certificate from the company under Section 20 of the Income-tax Act, the Income-tax Tribunal was right in not entertaining their claim for assessment under Sections 16(2) and 18(5). That point really does not arise as I am of opinion that Section 16(2) and Section 18(5) do not apply to the facts of the case. But if they did, if for some valid reason the assessee was in a position to satisfy the Income-tax authorities that the certificate under Section 20 was either lost or destroyed or could not be produced, the assessee would, in my opinion, be certainly entitled to lead other evidence to prove what such a certificate if produced would have shown. But it is not necessary for us for the purpose of determining this reference to decide that question. I therefore agree in answering the question as indicated by my Lord the Chief Justice. Reference answered in the negative.