

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

Laxmidas Mulraj Khatau

(M Chagla ,C.J Tendolkar, J.)

16.03.1948

JUDGMENT

M.C. Chagla, C.J.

1. The assessee's accounting year is the Hindu year Samvat 1998 which commenced on October 21, 1941, and ended on November 8, 1942. The assessee held some shares in the Khatau Makanji Spinning & Weaving Mills, Ltd., and on October 18, 1941, the company declared a dividend out of the profits of the year ended June 30, 1941. The dividend was made payable on and after November 3, 1941, and it was paid on that day. With regard to the dividends out of the profits of the year ended June 30, 1942, they were declared by the company on October 19, 1942, and the dividend was made payable on and after November 2, 1942, and it was paid on the same day. The Income-tax Officer treated both these dividends as the dividend income of the assessee for the assessment year 1943-44 as both the dates, viz. November 8, 1941, and November 2, 1942, fell in the S.Y. 1998. The assessee's contention was that as far as the dividend for the year ended June 30, 1941, was concerned the dividend should be assessed for Section 1997 and for the accounting year 1942-43 because it was declared on October 18, 1941; and Sir Jamshedji has contended that on the declaration of the dividend the shareholder became a creditor of the company and income accrued and arose to him although the payment thereof was deferred till November 3, 1941. On the other hand the Advocate General's contention is that it was only on November 8, 1941, that the assessee could have demanded the payment of the dividend from the company and therefore it was only on November 3, 1941, that the dividend became the income of the assessee. We think that Sir Jamshedji's contention is sound because as soon as the dividend was declared on October 18, 1941, the dividend became the income of the assessee which income they could deal with or dispose of in any manner they liked. The very dividend warrant which contains a declaration to be made by the shareholder under the rules framed under the Income-tax Act clearly shows what the position is, because what the shareholder has to declare is "I hereby certify that the dividend abovenamed relates to shares

which were my own property when the dividend was declared and were in the possession of." Therefore, the material date is not when the dividend was payable or actually paid but when it was declared. The Advocate General has relied on Section 16(2) which provides that 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. Now in this case we are not concerned with the expression "credited or distributed or deemed to have been paid, credited or distributed...." This case clearly falls under the expression "paid" and according to the Advocate General it is only when the dividend is paid that the assessee is entitled to include it in his assessment. It is impossible to give a literal construction to the expression "paid" used in this sub-section. If a literal construction were to be given, then it would amount to this that until the dividend warrant was actually cashed and the dividend amount was actually realised it cannot be stated that the dividend was paid to the shareholder. Even the Advocate General concedes that that is not the meaning to be attributed to the words of that sub-section. According to the Advocate General once the dividend is made payable, whether it is paid or not, it is immaterial. If that be so then a literal construction is impossible as far as the word "paid" used in that sub-section is concerned. I think the proper construction to give to that word is when the dividend is declared then a liability arises on the part of the company to make that payment to the shareholder and with regard to the shareholder when the income represented by that dividend accrues or arises to him. The mere fact that the actual payment of the income is deferred is immaterial and irrelevant.

2. We should, therefore, answer the question submitted to us in the affirmative. The Commissioner to pay the costs of this reference.