

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Ahmuty & Co. Ltd

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

21.09.1954

JUDGMENT

Chagla, C.J.

1. The question that arises on this reference is a very simple one and really not capable of much elaboration. The assessee is a dealer in shares and shares held by it in the business are the stock-in-trade of the business. In the assessment year 1950-51 the assessee company suffered a loss of Rs. 45,911 from its business in shares. That loss was carried forward to the assessment year 1951-52 which is the year under reference. In the assessment year 1951-52 the Income-tax Officer ascertained the assessee's business loss at Rs. 87,042. The assessee received a gross dividend income in respect of the shares which were its stock-in-trade amounting to Rs. 1,42,884. Therefore the result was that after setting off the loss of business against dividend income under section 24 (1) there remained a balance of Rs. 55,842. The assessee contended that the loss from business in shares in the preceding year, viz., Rs. 45,911, which, as already pointed out, was carried forward should be set off against the balance of the dividend income of Rs. 55,842. The Income-tax Officer refused to set off the loss contending that it could only be set off against the profits from the same business. The Tribunal agreed with the Appellate Assistant Commissioner who took a contrary view holding that the dividend received was a revenue receipt of the assessee's share business, and at the instance of the Commissioner this reference has been made to us.

2. Now, the contention of Mr. Joshi is that looking to the scheme of the Income-tax Act dividends constitute a separate income which must be separately shown under section 12 and which can never form part of business income under section 10. Mr. Joshi further contends that the Income-tax treats the dividend income as income per se. Mr. Joshi has drawn our attention to various sections of the Indian Income-tax Act, section 16 (2), section 18(3D), section 18(5), section 20 and section 49B, to satisfy us that a special machinery is set up under the Income-tax Act to deal with dividend income, and the inference he wants us to draw from the provisions is

that dividend income is looked upon as a separate head of income and can never be a part of the income arising from business.

3. Now, the well established principle of the Income-tax Act is that section 6 lays down various heads of income, and the fifth head which is "income from other sources" can only be requisitioned provided the income cannot be included in any of the preceding heads. Therefore, an income can only be properly included under section 12 as falling under "other sources" if it could not be legitimately included in any of the preceding heads. Therefore, if the assessee can legitimately include any income under section 10, section 12 would have no operation, because it is only a residuary section and what Mr. Joshi has to satisfy us is that dividend income cannot be legitimately included under section 10.

4. Now, on the facts found here that the shares of the assessee were its stock-in-trade and that dividend were paid in respect of these shares, it is difficult to understand how this dividend income did not arise to the assessee in the course of its business. The dividends which it received were incidental to the shares which it held as stock-in-trade and it received these dividends only because it was dealing in shares and the shares were its stock-in-trade. Therefore, if the income from the dividends can be included under section 10 in a case where an assessee is dealing in shares and the shares constitute its stock-in-trade, then that income cannot be taken out of the head of "business" under section 10 and be included as income from "other sources" under section 12.

5. Mr. Joshi has relied on the fact that under section 10 profits of a business can only be ascertained at the end of the year and Mr. Joshi says that dividends bear the characteristic of income as soon as they are declared, and, therefore, it must fall under a separate head and cannot be included in the head of "business". That argument, in our opinion, is untenable. It is perfectly true that when a business is carried on in order to ascertain whether that business has made profits which are subject to tax one has to wait till the end of the year and then make up account and then determine whether the ultimate result of the carrying on of the business has resulted in a profit or loss. But that does not mean that with regard to any particular item of business it is not possible to state whether that item has resulted in a profit or loss. Therefore, it would be possible to say of a business when dividends are declared in respect of shares held as stock-in-trade that those dividends constitute at a particular time profits of the business. Whether ultimately the business would result in profits or not would depend upon other factors and other circumstances.

6. Mr. Joshi has also relied on the definition of "total income" and he contends that total income has got to be computed according to the provisions of the Act, and he says that as far as dividend income is concerned it must be computed in the manner laid down by the Income-tax Act and as a separate machinery is set up for the computation of dividend income, therefore it must be

computed separately and independently of business income. That argument again is difficult to understand. There is nothing in the Income-tax Act which prevents a man doing business in shares from availing himself of the machinery laid down in the Act for the purpose of computing income from dividends. Mr. Joshi says that one important aspect of dividend income is that when it is shown as income what is shown is not the actual dividend received but dividend as grossed up under section 16 (2) and Mr. Joshi says that a business cannot show the grossed up dividend and say that that is the profit from business. Now, grossing up is provided in order to permit in certain cases an assessee claiming a refund. On the other hand, it may also result in an assessee who has a large income having to pay tax at a higher rate and to pay more tax on the grossed up dividend. Therefore grossing up is by no means an unmixed blessing under the Income-tax Act. Therefore, if any ordinary share-holder can show in his return a notional income, it is difficult to understand why a business man also in respect of this particular source cannot show the notional income which the Income-tax Act requires.

7. Mr. Joshi has relied on certain decisions which really do not directly deal with the point that we are considering, but he has either relied on certain observations or on what he says certain principles which can be deduced from these decisions. The first case he relied on is reported in *Mrs. Bacha F. Guzdar v. Commissioner of Income-tax, Bombay*. In that case what this Court held was that dividend income from shares in a tea company was not agricultural income because the immediate and effective source of the assessee's income was the declaration of dividend which entitled the assessee to receive the dividend and not any agricultural process. But this decision does not help Mr. Joshi to satisfy us that the income from shares which is received on a dividend being declared must be shown under section 12 and not under section 10.

8. The other case on which Mr. Joshi has relied is reported in *Commissioner of Income-tax v. Laxmidas Mulraj Khatau*. In that case we held that the dividend became the income of the assessee when the dividend was declared and not when the dividend was actually received. Now, this principle can as well be applied to an assessee who is doing business in shares. All that it means is that he would have to show his income from dividend in his business accounts at the date when the dividend is declared and not when he actually receives it.

9. Then strong reliance is placed on a judgment of the Madras High Court which is reported in *H. C. Kothari and Others v. Commissioner of Income-tax, Madras*. Now, that was a case where the assessee had income from securities and had also other sources of income including business. The business of the assessee ended in a loss but the assessee claimed earned income relief in respect of the interest on securities on the ground that the securities which the assessee purchased and sold as part of his business formed stock-in-trade and the profits arising in such purchase and sale including interest on securities should be treated as business profits. That contention of the

assessee was rejected by a Divisional Bench of the Madras High Court. The distinction between that case and the case that we are considering is apparent. Whereas "securities" is a separate head under the Indian Income-tax Act, "dividends" is not a separate head; and the view taken by the Madras High Court was that inasmuch as interest on securities was charged to tax and inasmuch as the interest on securities was a separate and distinct head, and if an income is chargeable under that head, it is not open either to the assessee or to the department to change the head and claim to tax it under a different head; and in the opinion of the Madras High Court the fact that securities might be part of the trade assets of the assessee did not make the interest in respect of those securities which was specifically charged under section 8 as part of the profits of the business of the assessee. But if the reasoning of the Madras High Court is correct, then that reasoning, far from supporting Mr. Joshi, is against him, because the ratio of that decision as we see it is that inasmuch as the Income-tax Act has provided a separate head for income from securities, that income cannot be treated as income falling under any other head. If the intention of the Legislature was that dividend should be a separate head of income as interest from securities, there was nothing to prevent the Legislature in section 6 from adding one more head to the heads included in that section and providing that dividends should be a separate head of income.

10. Therefore, in our opinion, really the question ultimately turns on this. Is the assessee, on the facts of this case, entitled to include the income from dividends as his business income? The answer to that question depends upon whether the dividend income was earned in the course of the business or arose out of the business. On the facts of this case the answer to that question can only be in the affirmative. If that is the answer, then the taxing department cannot succeed in compelling the assessee to show this income under section 12 which section can only come into operation provided the income earned by the assessee does not legitimately fall under any other head under section 6.

11. The answer, therefore, to the question submitted to us will be in the affirmative. The Commissioner to pay costs.

12. Reference answered in the affirmative.