

BOMBAY HIGH COURT

Purshotamdas Thakurdas

Vs.

Commissioner of Income-Tax

Income-tax Reference No. 59 of 1957

(Chagla, C.J. And S. T. Desai, J)

17.03.1958

JUDGMENT

Chagla, C.J.

1. M/s. Narandas Rajaram and Co. Ltd., carried on business both in taxable territories and also in Pakistan. During the S.Y. 2007 (10th of November, 1950 to 30th of October, 1951), profits accrued to this Company both in India and Pakistan. On 14-10-1952, the company declared dividend for S.Y. 2007. The total dividend in respect of the shares held by the assessee came to Rs. 1,71,992 and the dividends were declared out of profits which partly accrued in India and partly in Pakistan. The resolution declaring the dividends states :

"A moiety of the amount of the dividend be paid to the share-holders on and after 16-10-1952, whose; names appear on the Register of the Company as on 6-10-1952 and the other moiety be postponed for payment within two months from the date on which remittances from Pakistan become free and the monies are actually received."

Now, the dispute arises with regard to the moiety of dividends which were to be paid two months after remittances from Pakistan became free and the moneys were actually received. The contention of the Department was that these dividends were liable to tax for the assessment year 1953-54 and the assessee contended that inasmuch as these dividends had never been paid to him, he was not liable to tax.

2. The question as to the year in which the dividends should be considered as part of the total income of an assessee is dealt with by the Legislature in Section 16(2) and that section provides that for the purpose 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. Therefore, a special provision is made by the Legislature with regard to a special type of income and that special type of income is dividend income and this income is to be included in the total income of the previous year in which the dividend is paid.

3. Mr. Palkhiwalla has contended that the assessee maintains his books of account on a cash basis and he says that whenever the income might have accrued, as far as the assessee is concerned, he can only be made liable to tax provided the dividend is received by him. He says that the assessee must receive the dividend warrant by which the dividend is payable, in which case although he may not receive the actual cash, he receives the money's worth. We are unable to accept Mr. Palkhiwalla's contention that Section 16(2) can be controlled by Section 13. The method of keeping accounts cannot possibly control the clear provisions of the law that the dividend income is to be included in a particular year. The only question that we have, therefore, to consider is what is the interpretation to be placed on the expression "paid, credited or distributed" used by the Legislature. If in law, the dividend has been paid, then it must be considered to be the income of the year in which it is paid.

4. The Tribunal relied on a judgment of this court reported in *Commissioner of Income Tax, Bombay City v. Laxmidas Mulraj Khatau*¹ for coming to the conclusion that the expression "paid" must be construed to mean "declared," and, therefore, the view taken by the Tribunal was that when the dividend was declared on 14-10-1952 for the purpose of Section 16(2), it was paid on that date and therefore, it must be included in the total income of the assessee for the assessment year 1953-54. We agree with Mr. Joshi that there are various provisions in the Income-tax Act under which an assessee has to pay tax on an income which is purely notional and which he has never received and Mr. Joshi says that the Legislature wanted to tax this income whether in fact the income was received by the assessee or not; and, therefore, what Mr. Joshi says is that it is irrelevant to consider whether in fact the assessee received the payment or whether the assessee was likely to receive the income. All that we have to consider is whether a declaration of dividend has been made. As soon as a declaration of a dividend is made, the assessee must be deemed to have been paid the dividend income and he must pay tax on that income.

5. Now, turning to the judgment in *Khatau Mill's case*, (1948) 16 ITR 248, that was a simple case where the dividend was declared on 18-10-1941 and it was made payable on and after 3-11-1941. The accounting year of the assessee commenced on 21-10-1941 and ended on 8-11-1942 and what we held was that as soon as the dividend was declared on 18-10-1941, the dividend became an income of the assessee and therefore, the dividend income was received by the assessee and therefore, the dividend income which was received by the assessee on 3-11-1941 was the dividend income of the assessment year 1942-43 and not of the assessment year 1943-44. Now, certain significant features of this case must be borne in mind before we turn to the actual decision. Although the dividend was declared on the 18th of October, 1941, it was made payable without any condition without any contingency on 3-11-1941. Therefore, instead of the dividend being made immediately payable, in respect of which the company was liable in present the company deferred payment to 3-11-1941 and in fact the assessee did receive the payment. The only question was whether the income should be included in the total income of the assessee for the assessment year 1943-44 or the assessment year 1942-43 and we had said that the relevant date was the date of declaration of the dividend and not the date when the dividend warrant could be cashed. These are the facts and this is the decision. But every decision must be considered not from the point of view of what it decided on particular

¹(1948), 16 ITR 248

facts but what is the principle that emerges from that decision. Now, when you look at the

judgment, it is clear that the view that we have taken is that the liability arose on the part of the company to make the payment when the dividend was declared and the right to receive the income accrued to the share-holder also when the dividend was declared and what we pointed out was that all that the Company did was to defer time to discharge a present liability and the assessee could not receive immediate payment in respect of a right which had already accrued to him.

6. Now, let us turn to the facts of this case. When you look at the resolution passed by the Company, it is clear that the liability of the company is contingent and the right of the shareholders to receive a moiety of the dividend is equally contingent. The contingency is the remittances from Pakistan becoming free. Now, this is an uncertain event and when something is made dependent upon an uncertain event, in law, a contingency arises and, therefore, it is clear that there is no absolute liability undertaken by the company which liability is to be discharged at a future date. The liability undertaken here is contingent upon remittances from Pakistan becoming free, an event which may never come about. It may be mentioned in passing that though six years have passed, that event has not yet happened. Therefore, as against the case we were dealing with viz., Khatau Mill's case, 1948-16 ITR 248, where an absolute liability was undertaken to be discharged on a specific date, we have here a case where a contingent liability is undertaken and whereas in the Khatau Mill's case, we were dealing with a shareholder who had in fact received the dividend, here we are dealing with the case of a share-holder who had never received the dividend and who may never receive it. Mr. Joshi says that irrespective of these differences between the case here and the in the Khatau Mill's case, the simple answer to the assessee's difficulties is the Section itself. Mr. Joshi says that if the Legislature chose to make the declaration of a dividend the only test of taxability, then it is not for us to say that because of hardships or other difficulties of an assessee, some other test should be laid down. We entirely agree with Mr. Joshi. But Mr. Joshi's difficulty for which he can have no answer, is that a declaration of dividend is not made the test of taxability by the Legislature. It is difficult to understand why, if the intention of the Legislature was that no other circumstances should, be considered except the declaration of dividend, the Legislature should have indulged in a circumlocution and instead of using the simple expression "to be the income of the previous year in which it was declared" should have used the words "in which it is paid, credited or distributed." Therefore, one thing is clear from the language used by the Legislature that it did not intend to equate "paid" with "declared" in every case. Therefore, it is open to us to consider, notwithstanding the Khatau Mill's case, whether on the facts of this case, it could be said that dividend has been paid, which, although it may have been declared, may never be payable and in fact has not been paid. We are not concerned to decide, as we did not decide in Khatau Mill's case as to the proper meaning to be given to the expression "credited." The whole of the reference is based on this Reference on the contention of the Department that this is a case where a dividend has been paid within the meaning of Section 16(2). It was never suggested or contended that the dividend was credited or distributed and therefore, we must confine our decision to holding that under the facts and circumstances of this case the dividend was not paid in the year previous to the assessment year 1953-54.

7. We, therefore, answer the first question submitted to us in the negative.

8. Questions 2 and 3 must be answered in the light of the decision in *Commissioner of Income Tax, Bombay City II v. Shanti K. Maheshwari*²,

9. Question No. 2 in the affirmative.

10. Question No. 3 in the affirmative in the light of the judgment in that case.

11. No order as to costs.

12. No order on the notice of motion. No order as to costs on the notice of motion.

Answers accordingly.

²1958-33 ITR 313