

BOMBAY HIGH COURT

Nirmala M Doshi Smt

Vs

Commissioner of Income Tax

(K.K.Desai, J.)

31.03.1970

JUDGEMENT

K.K.Desai, J.

(1.) THE applicant -assessee earned property income, business income and income from other sources, i.e., dividend income, resulting from ownership of shares of limited companies. In the year of account ending March 31, 1958, the assessment year being 1958 -59, the assessee applied to the Tata Iron and Steel Co. Ltd. to allot to the assessee 2,700 ordinary shares of the fact value of Rs. 75. It appears that along with the application the assessee had to pay Rs. 30, Rs. 25 thereof being premium. The assessee paid the application money of Rs. 30, and in pursuance thereof, some time prior to November 25, 1956, acquired 2,700 ordinary shares of the above company.

(2.) IT appears that the assessee was liable to pay the sum of Rs. 70 by installments of two calls of Rs. 35 each in respect of the above shares. By notice dated November 25, 1956, the assessee was called upon to pay the first call of Rs. 35 per share and he was informed that in default of payment of the sum of Rs. 35 of the call before December 29, 1956, interest at the rate of 6 per cent. per annum would be charged from the due date to the date of actual payment. In fact, the assessee defaulted in making payment on the due date and ultimately paid Rs. 94,500 of the first call along with interest of Rs. 3,775, on June 28, 29, 1957. The assessee, thereafter, received notice for the second and final call claiming Rs. 35 per share dated May 1, 1954. By this notice, the assessee was notified that in default of payment of the call money on July 1, 1957, interest at the rate of 9 per cent. per annum would be charged from the due date to the date of actual payment. The assessee made default in payment on the due date and ultimately paid Rs. 94,500 of the second call with interest of Rs. 5,245 on February 24, 1958.

(3.) PRIOR to the date, the above company served the assessee with a notice dated February 1, 1958, copy whereof is annexure 'A' to the statement of the case. Under the powers reserved to the company in the articles of association and other enabling provisions (of the Companies Act), this notice informed the assessee that unless the sum of Rs. 94,500 of the second and final call was paid in the company's office before February 24, 1958, with accrued interest thereon, the share were liable to be forfeited and the board would proceed to a forfeiture of the shares. ;

