

# **BOMBAY HIGH COURT**

D.M. Dahanukar

Vs

Commissioner of Income-Tax

(Kotwal, C.J. and V Desai, J.)

22.02.1967

## **JUDGMENT**

**V.S. Desai, J.**

1. The question referred on this reference under section 66(2) of the Indian Income-tax Act, 1922, is :

"Whether, there was any evidence on which the Tribunal could come to the conclusion that the petitioner had concealed the particulars of his income or deliberately furnished inaccurate particulars for the purpose of section 28(1)(c) of the Indian Income-tax Act ?

2. The assessee is a director of the Belvandi Sugar Farm Ltd. and also the managing director of its managing agents, M. L. Dahanukar & Co. Ltd. The assessee held 750 ordinary shares and 500 6% preference shares in the Belvandi Sugar Farm Ltd. At the general meeting held on the 24th September, 1953, the Belvandi Sugar Farm Ltd. Declared dividends on the ordinary and preference shares in respect of the accounting year ended on the 30th September, 1952. The dividends amounts due to the assessee in respect of his ordinary and preference shares came to Rs. 60,000 and Rs. 3,000, respectively. In the financial year 1953-54, which was the accounting year of the assessee, dividends were also declared by certain other companies in which the assessee held shares and thus on the dividends declared by the Scindia Steam Navigation Co. on the 24th February, 1954, a sum of Rs. 675 was due to the assessee in respect of his shares of the said concern; from the New United Construction Co. a sum of Rs. 4,500 was due in respect of the dividend which was declared on the 15th December, 1953, and a sum of Rs. 560 was due to the assessee in respect of the shares of the Belapur Sugar Mills Ltd. In the return, which the assessee filed for the assessment year 1954-55, the assessee did not include the amount of Rs. 63,000 in respect of the dividend declared by the Belvandi Sugar Farm Ltd. and the amount of Rs. 5,735 in respect of the aggregate amount of the dividends of the other three companies referred to above. The return filed by the assessee was accepted and the assessment completed on

the 28th February, 1955. For the next assessment year 1955-56, the assessee filed his return on the 2nd of May, 1956. In this return he include the amount of Rs. 27,000 as divided from the Belvandi Sugar Farm Ltd., which was declared on the 25th September, 1954. The inclusion of a big amount of dividend from the Belvandi Sugar Farm Ltd. in the assessment year 1955-56 led the Income-tax Officer to make enquiries with the assessee as to why no such dividends were included in the assessment year 1954-55. Thereafter, on the 25th June, 1956, the assessee submitted a voluntary return in respect of his assessment for the assessment year 1954-55, disclosing therein the amount of Rs. 63,000 as divided from the Belvandi Sugar Farm Ltd. in respect of the ordinary and preference shares held by the assessee. Since the assessment for the assessment year 1954-55 was already completed, the Income-tax Officer reopened the same under section 34 and reassessed the income by inclusion of the said amount of Rs. 63,000 as well as the further amount of Rs. 5,735, which also constituted the dividend declared in the previous year corresponding to the said assessment year and liable to be included in the said assessment. The Income-tax Officer also issued a notice to the assessee under section 28(3) for penalty proceedings and in the said proceedings levied a penalty of Rs. 37,000 under section 28(1) (c) since, in his view, the assessee, by not including the said amounts of dividends in his return, had concealed the particulars of his income or deliberately furnished inaccurate particulars thereof. The assessee had tried to explain to the Income-tax Officer that there was no deliberate attempt on his part to conceal his income or to furnish inaccurate particulars thereof because all along until the assessment year 1955-56, he had been under the impression that dividends were to be included in the return for the account year in which they were actually received. He had made returns on that basis and the said return had also been accepted by the Income-tax Officer. It was only in the Assessment year 1955-56 that he learnt that his impression was wrong and that the dividends had to be included in the year in which they were declared, although they might not have been actually received, and, therefore, in the return for the assessment year 1955-56, he had himself included the dividends of Rs. 27,000, although it had not been received during that year. The assessee also pointed out that, having realised his mistake, he had himself made a revised return even with regard to the assessment year 1954-55, which had already been concluded, and urged that this conduct on his part clearly showed that he had no intention either to conceal or to deliberately furnish inaccurate particulars. The Income-tax Officer, however, was not satisfied with the explanation offered by the assessee because in his opinion the excuse which the assessee had put forward only meant ignorance of law on his part and could not, therefore, be accepted. In the appeal to accepted the Appellate Assistant Commissioner, the Appellate Assistant Commissioner accepted the explanation and the conduct of the assessee, it was not possible to hold that there was any deliberate intention on the part of the appellant to conceal his income or to furnish inaccurate on the part of the appellant to conceal his income or to furnish inaccurate particulars thereof. In that view of the matter he allowed the assessee's appeal and set aside the

order of penalty passed by the Income-tax Officer. In the further appeal, which was taken by the department to the Income-tax Appellate Tribunal, it was held by the Tribunal, disagreeing with the Appellate Assistant Commissioner and agreeing with the Income-tax Officer, that the assessee had concealed the particulars of his income or had deliberately furnished inaccurate particulars in order to escape liability for the dividends during the previous year and, therefore, the imposition of the penalty under section 28(1) (c) was justified. The Tribunal, however, reduced the penalty amount from Rs. 37,000 to Rs. 20,000.

3. Now, in coming to the conclusion that the assessee was guilty either of concealing the particulars of income or deliberately furnishing inaccurate particulars thereof, the reasoning of the Tribunal, briefly stated, was that the position was clear in law that the dividend had to be included in the returned for the year in which it was declared and, consequently, the assessee was not entitled to plead ignorance of law on his part and that the amount of income from dividend shown in the original return was so disproportionate and divergent from that found subsequently as to leave no room for doubt about the lack of *bona fide* on the part of the appellant. It will thus be seen that the only reason for which the Tribunal concluded that the assessee was guilty of concealment was because the amount which was not included in the income constituted a large and substantial part of the income, apart from the order reasons which they gave that the assessee could not plead ignorance of law.

4. Now, so far as the position in law is concerned, it is undoubtedly true that at one time the view was taken that the date of the declaration of the dividend was the date which was to be taken into account to find out in which year the dividend income was to be included. It has, however, been later on pointed out by the Supreme Court that it is neither the date of the declaration nor the date when it is actually paid, but the date or the time when the company makes the dividend unconditionally payable to the shareholders that is the material time to be considered for the inclusion of the dividend income in the income of the assessee. The view taken by the Tribunal, therefore, that the assessee was guilty of concealment because he had not included the dividend income of the year in which it is declared cannot be said to be the correct view. Since the order of penalty is based on the basis of the view that there is concealment on the part of the assessee because he has not included the dividend income in the year in which it was declared, it cannot be sustained since that view is no longer the correct view of law. Moreover, on the facts and circumstances of the case, there does not appear to be any evidence on record from which the assessee could be said to have either concealed or deliberately furnishing of inaccurate particulars. There can be no doubt, in our opinion, that the mere omission will neither amount to concealment nor a deliberate furnishing of inaccurate particulars unless there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so

as to avoid the imposition of tax thereon. Now, the facts of the present case show that the assessee, for a number of years up to 1954-55 and inclusive of the said year, was filing returns including therein dividends which had been actually received during the account year and for a number of years these returns were accepted and the income assessed to tax. It would thus be seen that the dividend incomes received by the assessee were not suppressed by him from the tax authorities but were subjected to tax in the years in which they were actually received. In the return for the assessment year 1955-56 for the first time he included an amount of dividend on the basis of the date of declaration. According to the assessee's explanation this was because it was after the completion of his assessment for the assessment year 1954-55 that he learnt in casual discussions with his acquaintances that the dividends had to be included in the return on the basis of the date of declaration. Now, the assessment for the assessment year 1954-55 was completed on the 24th February, 1955, and before 2nd May, 1956. According to the assessee's explanation, some time after 28th February, 1955, and before 2nd May, 1956, he appears to have been enlightened on the question as to the correct time with reference to which the dividends are to be included in the returns. His conduct in including the dividend of Rs. 27,000 in the return for the assessment year 1955-56 is consistent with his explanation, since in none of the prior year he had included the dividend income on the basis of the date of its declaration. The date of examination of the return for the assessment year 1955-56 was 13th June, 1956, and from the order of the Income-tax Appellate Tribunal it appears that on that day the Income-tax Officer made enquiries with the assessee as to why dividends from the Belvandi Sugar Farm Ltd. were not included in the earlier return in connection with the assessment year 1954-55 showing an additional dividend income of Rs. 63,000 from the Belvandi Sugar Farm Ltd. According to the assessee, it was because of his realisation that the omission to include the said dividend in the earlier assessment was a mistake that he voluntarily sought to correct it by making the revised return. Accordingly to the learned counsel for the department, it was not out of a bona fide desire to correct a mistake which was inadvertently made but because the assessee knew full well that he could not avoid the said income from tax any more that he made the revised return on the 25th June, 1956. The learned counsel points out that if it was really out of a bona fide desire to correct a mistake inadvertently committed, why was it that the assessee waited till the 25th June, 1956, and did not file the revised return earlier or at the time when the return for the assessment year 1955-56 was submitted on May 2, 1956 ? It is only because of the enquiry which the Income-tax Officer appears to have made with the assessee on the 13th June, 1956, that the assessee has thought it desirable to come out with a revised return on the 25th June, 1956. It is true no doubt that the assessee could have made the revised return earlier than the 25th June, 1956, when he actually made it. But the mere circumstance that he did not do so would not be sufficient to draw a conclusive inference that he had deliberately attempted to conceal his income or to furnish inaccurate particulars thereof and it is only when he found that he could not succeed in his said

attempt that he came out with a revised return. The conduct of the assessee is also consistent with the explanation which he has given. He included Rs. 27,000 as dividend income from the Belvandi Sugar Farm Ltd. in the return for the assessment year 1955-56 when he learnt that the inclusion must be made on the basis of the date of the declaration of the dividend. On the 13th June, 1956, the enquiry made by the Income-tax Officer confirmed what he had learnt and made him realise that the dividend of Rs. 63,000 which he had omitted to include in the return for the assessment year 1954-55 ought to have been included in that return in accordance with law. He accordingly filed a revised return for the said assessment year. The conduct of the assessee thus being consistent with the hypothesis that he had no deliberate intention to conceal the income or to furnish inaccurate particulars thereof, we do not think a conclusion can necessarily be drawn from the circumstances pointed out by the learned counsel for the department that there was any intention on his part to conceal his income and to evade the imposition of tax thereon. The mere circumstance that the amount omitted was large and substantial would not be sufficient to draw an inference that the omission was deliberate or due to lack of bona fides on the part of the assessee. In our opinion, therefore, there is no evidence on record in support of the conclusion arrived at by the tribunal that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars thereof so as to make himself liable for the imposition of a penalty under section 28 of the Income-tax Act.

5. In the result, therefore, we answer the question referred to us in the negative. The assessee will get his costs from the Commissioner.

6. Question answered in the negative.

