

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Tata Sons Private Ltd

(K.K. Desai, and R Kantawala, J.)

19.10.1972

JUDGMENT

K.K. Desai, J.

1. In Reference No. 33 of 1964 and also in Reference No. 35 of 1964 the questions raised relate to the true construction and effect of the provisions in sections 184 and 199 of the United Kingdom Income Tax Act, 1952, in connection with the claim of the assessee concerned for relief under section 49D of the Indian Income-tax Act, 1922.

2. In Reference No. 33 of 1964, the claim for relief related to the assessment years 1955-56 and 1957-58, therelevant account years being calendar years 1954 and 1956. In these two years the assessee had received the respective sums of Rs. 59,149 and Rs. 56,766 by way of dividend income, accrued without the taxable territories, i.e., income in the United Kingdom. The claim of the assessee under section 49D (1) was that it was resident in the taxable territories in the year of account. In respect of the above dividend income deduction had been made and the assessee had paid income-tax under the law in force in the United Kingdom. For this reason the assessee was entitled to deduction from the Indian income-tax payable by it in accordance with the scheme of section 49D (1). The Income-tax Tribunal decided the claim in favour of the assessee and granted the relief as claimed. The Income-tax Tribunal construed the above sections of the United Kingdom Income Tax Act to mean that in respect of the dividend income which had accrued to the assessee income-tax was paid by the assessee "by deduction or otherwise" within the meaning of section 49D (1). This finding is challenged in the present Reference No. 33 of 1964 and the two questions referred are as follows :

"(i) Whether the assessee-company is entitled to the benefit of the relief as provided under section 49D (1) in respect of dividend income of Rs. 59,149 for the assessment year 1955-56?

(ii) Whether the assessee-company is entitled to the benefit of the relief as provided under section 49D (1) in respect of dividend income of Rs. 56,766 for the assessment year 1957-58 ?"

3. In the Income-tax Reference No. 35 of 1964, similar contentions were made on behalf of the assessee in respect of the assessment years 1954-55 and 1955-56, the relevant account years

being the years ended 30th June, 1953 and 1954. The Income-tax Tribunal made findings in favour of the assessee and the questions raised run as follows :

"1. Whether the assessee-company is entitled to the benefit of the relief as provided under section 49D (1) in respect of the dividend income of Rs. 1,20,523 received from the English companies and/or of Rs. 16,894 received from the American companies, for the assessment year 1954-55 ?

2. Whether the assessee-company is entitled to the benefit of the relief as provided under section 49D(1) in respect of the dividend income of Rs. 1,21,636 received from the English companies and/or Rs. 11,536 received from the American companies for the assessment year 1955-56 ?"

4. In support of these two references, on behalf of the revenue, Mr. Hajarnavis argued that under section 184 of the United Kingdom Income Tax Act the company pays tax on profits and gains made by the company. The company is authorised and entitled to make deductions at standard rates from dividends payable to shareholders. The dividends paid to these assesseees were never taxable in the hands of the assessee (shareholder) or otherwise. There was no statutory provision for taxing the dividend income nor was any machinery prescribed for assessing to income-tax was never charged in respect of dividend income. He accordingly submitted that the findings made by the Income-tax Tribunal in these two references as regards the true construction and effect of the relevant provisions in the United Kingdom Income Tax Act were all incorrect.

5. He, however, pointed out that these questions also arose before the High Court of Calcutta in the case of Commissioner of Income-tax v. Clive Insurance Co. Ltd., and the High Court, after considering the relevant provisions of law including sections 184 and 199 of the United Kingdom Income Tax Act, 1952, made findings rejecting the contentions made on behalf of the revenue. These findings are summarised in the head note in the following words :-

"In the English statute there is no provision corresponding to section 18 (5) of the Indian Income-tax Act, 1922, which specifically provides that amounts deducted from the dividend income of a member will constitute payment of income-tax by the member. Unlike the position in India the amounts so deducted are not made over to the revenue authority in U. K. and are retained by the company. Further, the income from dividends in the hands of the shareholders are not liable to any income-tax when such dividends have been declared and paid out of profits which have been taxed in the hands of the company. Notwithstanding these peculiar features, the sums deducted from the dividend amounts payable to a member constitute, under the law and system of taxation in U. K., payment of income-tax by the member and are treated and recognised as such. The provisions of the statute and the judicial decisions make the position quite clear. Section 184 of the English Income Tax Act, 1952, empowers the company to deduct tax at the standard rate from the dividend payable to its members. Section 199 of the English Act which deals with Explanations of income-tax deductions to be annexed to dividend warrants, etc., refers to such deduction specifically as deduction of income-tax. Again, in section 493 of the English Act deduction under section 184 from the dividend income is categorically described as deduction of income-tax. Judicial decisions, particularly Canadian Eagle Oil Co. Ltd. v. King and Ritson v. Philips, make it clear that whenever tax is deducted by the company from the dividend amount payable to a members under section 184 the sum so

deducted as tax clearly constitutes payment of income-tax by deduction by the member."

6. Having made these findings in connection with the claim for relief made by the assessee in that case under section 49D of the Indian Income-tax Act, 1922, the court held :

"The assessee-company had paid tax at the standard rate and, therefore, there was no difficulty in applying the provisions of Explanation (iii) to section 49D and ascertaining the rate of tax of the aid country in accordance therewith. Therefore, the assessee was entitled to relief under section 49D."

7. The attempt of Mr. Hajarnavis was to re-argue all the questions decided in the above decision before us and to persuade us to make findings contrary to, and inconsistent with, the findings made therein. We have informed Mr. Hajarnavis that having regard to "uniform policy laid down in income-tax matters" we did not propose to give him a long hearing as he desired. The practice and the policy established is that in these matters "whatever our own view may be we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute." (*See Maneklal Chunilal & Sons v. Commissioner of Income-tax and Commissioner of Income-tax v. Chimanlal J. Dalal & Co.*)

8. Following the above practice, our findings in the present two references are as follows :

9. The dividend income of Rs. 59,149 for the assessment year 1955-56 and the dividend income of Rs. 56,766 for the assessment year 1957-58 made by the assessee in Income-tax Reference No. 33 of 1964 was income which accrued during the relevant years without the taxable territories and the assessee had paid in the United Kingdom with which there was no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in the United Kingdom. The assessee shall be accordingly entitled to the deduction from the Indian income-tax payable by him of a sum calculated as provided in section 49D.

10. Similarly, in the Income-tax Reference No. 35 of 1964, our finding is that the assessee in that case had dividend income from insurance companies of Rs. 1,06,731 and Rs. 1,09,701, respectively, in the assessment years 1954-55 and 1955-56. The assessee had dividend income from American companies in the sum of Rs. 16,894 and Rs. 11,536 respectively in the above two years. These dividend incomes had accrued in the non-taxable territories and the assessee had paid in those countries income-tax by deduction or otherwise in respect of that dividend income. There was no reciprocal arrangement for relief or avoidance of double taxation in those countries. The assessee was accordingly entitled to relief under section 49D upon calculations made in accordance with the scheme of that section.

11. Our answer to the questions in Income-tax Reference No. 33 of 1964 accordingly are in the affirmative.

12. Similarly, our answers to the questions in Income-tax Reference No. 35 of 1964 are also in the affirmative. The figures of Rs. 1,20,523 and Rs. 1,21,636 mentioned in the questions are by consent altered respectively to Rs. 1,06,731 and Rs. 1,09,701. The revenue will pay the costs.



