

NAGPUR HIGH COURT

Jalurara Bhikulal Firm of Itwara

Vs

Commissioner of Income Tax

Misc. Civil Case No. 161 of 1950

(Mangalmurti and Deo, JJ.)

22.04.1952

ORDER

Mangalmurti, J.

The Income-tax Appellate Tribunal has referred the following question for our opinion:

"Whether in the circumstances of the case, is the assessee entitled to the benefits of Sections 16(2) and 18(5), Income-tax Act, in respect of, the sum of Rs. 5,086/-?"

2. The assessee had purchased certain shares but did not get his name registered in the book of the company. In the assessment year 1948-49 he returned the incomes from dividend on these shares and produced the relevant 'dividend certificates'. As the shares did not stand in the name of the assessee but others persons, the Income-tax Officer did not treat this income as income from dividends and did not grant the relief under Section 16(2) and Section 18 (5), Income-tax Act. The receipt was treated as income from other sources. This order was confirmed by the Appellate Assistant Commissioner and the Appellate Tribunal.

3. Under Section 3(1) the total income of any previous year of any person includes all income, profits and gains from whatever source derived which are received or are deemed to be received in British India in such year by or on behalf of such person. Section 16 (2) provides:

"For the purposes 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, and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited, or distributed, were deducted

therefrom, be equal to the amount of the dividend."

This is what is known as grossing up dividends, and the amount by which the income from dividend is increased under this section is treated as tax paid on behalf of the assessee. That is Section 18(5) which, so far as it is material for this case, runs:

".....any sum by which a dividend has been increased under sub-S.(2) of Section 16, shall be treated as a payment of income-taxon behalf..... of the shareholder.....and credit shall be given to him therefore in the assessment, if any, made for the following year under this Act."

Sections 48(3) and 49B were also referred to by the learned counsel for the assessee. Under the latter Section if the income from dividend is included in the total income of a shareholder, he shall be deemed in respect of such dividend himself to have paid the income-tax though the tax on this income has in fact been paid by the company which has distributed that dividend. Section 48(3) is not relevant. It says that where an income of one person is included under any provision of the Act in the total income of any other person, such other person only shall be entitled to a refund under the Section in respect of such income. The sum in question is not the income of any other person which under the provisions of the Act is included in the total income of the assessee.

4. From the foregoing provisions it is clear that the person who is entitled to the benefit of the income-tax paid by a company on the dividend distributed by it is the share-holder. Relying on - '*Shri Shakti Mills Ltd. v. Commissioner of Income-tax*'¹, the Tribunal has held that "share-holder" mentioned in Section 18(5) of the Act is a person who owns shares and who is shown as a share-holder in the register of the company. The word "share-holder" is not defined in the Act or in the Companies Act. Under the Companies Act the subscribers to the memorandum of a company and every other person who agrees to become a member of the company and whose name is entered in the register of members shall be a member of the company. As every company incorporated under the Companies Act is not limited by shares, a more comprehensive word, namely, "member" was used. But where a company is limited by shares, the terms "member" and "share-holder" are synonymous. A member is a share-holder and a share-holder is a member. See Palmer's Company Law, Edn.19, page 81. Under Section 28, Companies Act, the shares of any member in a company is moveable property transferable in the manner provided by the Articles of the company. Section 34, read with the Articles of the company provide the mode of transfer of shares. Where the Articles of a company provide that an instrument of transfer is to be executed both by the transferor and the transferee, a transfer executed by the transferor alone does not pass title. Where a shareholder has, under the Article, an unrestricted right to transfer his shares,, the transfer is complete as soon as the parties sign the deed of transfer. The assessee has led no evidence to prove that the transfers in his favor were complete.

5. Under Regn.18 of Table A in Sch.I to the Companies Act the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members

in respect thereof. The right to transfer may be subject to conditions. The learned Counsel has not brought to our notice any Article of the

¹ AIR 1948 Bom 394

company in respect of whose shares the amount in question was received which dispenses with this requirement of Regn.18. Pending registration the transferee has only an equitable right to the shares transferred to him. He does not become the legal owner until his name is entered in the register in respect of shares transferred to him. Delay in registration involves danger to the transferee, for some prior equity may come to light as in - '*Ireland v. Hart*²', where a husband mortgaged shares of which he was a trustee for the wife. In order to become a legal owner of the shares it is not enough to merely hold physical possession of the share certificate, but it is necessary to have the name entered in the register of members and also on the share certificate. This is really the sense in which the word "share-holder" has been used in Section 18 (5) and Section 49-B, Income-tax Act. We are unable to accede to the contention that a person who has an equitable right to the shares is the shareholder within the meaning of this word in the Act. In that view, an equitable mortgagee would also be a share-holder along with the legal owner and though the former does not receive dividend he may be held liable for suppressing this income or furnishing inaccurate particulars of income. Such a construction is hardly reasonable. We are in respectful agreement with the view taken in - '*Shakti Mills*' case' cited supra and hold that the assessee is not entitled to the benefits of Section 16 (2) and Section 18(5) because he is not registered as a share-holder.

6. The reference is answered in the negative The assessee will pay the cost of this reference. Counsel's fee Rs. 100/-. Paper Book costs will be paid by the assessee.

Reference answered.

²(1902) 1 Ch 522