Sardar Baldev Singh vs Commissioner Of Income-Tax, Delhi & ... on 2 September, 1960

Equivalent citations: 1961 AIR 736, 1961 SCR (1) 482, AIR 1961 SUPREME COURT 736

Author: A.K. Sarkar

Bench: A.K. Sarkar, Bhuvneshwar P. Sinha, Syed Jaffer Imam, J.C. Shah

PETITIONER:
SARDAR BALDEV SINGH

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, DELHI & AJMER.

DATE OF JUDGMENT:
02/09/1960

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
SINHA, BHUVNESHWAR P.(CJ)
IMAM, SYED JAFFER
SUBBARAO, K.
SHAH, J.C.

CITATION:
1961 AIR 736 1961 SCR (1) 482
CITATOR INFO :

R	1961 SC 743	(12)
D	1961 SC1708	(14,17)
F	1961 SC1717	(8)
R	1962 SC 123	(5,6)
R	1962 SC1323	(2,6)
E	1963 SC 491	(2)
RF	1963 SC 835	(2,4)
R	1964 SC 925	(24)
R	1965 SC1375	(11,12,35 ETC.)
R	1965 SC1862	(10)
MV	1966 SC1089	(55)
R	1968 SC 150	(7)
E	1968 SC1286	(6)
RF	1972 SC 425	(26)
RF	1986 SC1099	(9)

ACT:
Income-tax Assessment-Undistributed dividend deemed to have been distributed-Reassessment as income escaping assessment-Venue-Constitutional validity of enactment Indian Income-tax Act, 1922 (11 of 1922), SS. 23A, 34, 22, 64- Government of India Act, 1935, Seventh Sch., List I,Entry 54.

HEADNOTE:
The appellant, at the time a resident of Lahore, was assessed to income-tax on an income of Rs. 49,047 for the assessment year 1944-45 by the Income-tax Officer, Lahore. After the partition in 1947 he shifted to Delhi and resided there. He was one of the three share-holders of a company called Indra Singh and Sons Ltd. of Calcutta, the shares of all the three shareholders being equal. The company at a meeting held oil April 17, 1943, passed its accounts for the year ending March 31, 1942, but declared no dividends although the accounts disclosed large profits. On June 11, 1947, the Income-tax Officer, Calcutta, passed an order under s. 23A of the Income-tax Act that the sum of Rs. 4,74,370, being the appellant's share of the undistributed assessable income of the company, be included in his income for the assessment year 1944-45. Thereupon the Income-tax Officer, Delhi, on April 10, 1948, issued a notice to the appellant, who was then working as the Defence Minister of India and residing in Delhi, under s. 34 of the Act to file a revised return, which he did under protest, reopened the earlier assessment and by a fresh order made on March 25, 1949, assessed the appellant on an income of Rs. 5,23,417 for the year in question. It was contended on behalf of the appellant that the proceeding under S. 34 could be held only in Lahore and not in India at all. The question for determination was whether the Income-tax Officer, Delhi, could validly reassess the appellant under s. 34 of the Act.
Held, that the issue of a notice under S. 34 of the Income-tax Act, 1922, under the provision of the section itself, attracted such provisions of the Act as might apply to a notice issued under s. 22(2) of the Act and since s. 64 of the Act was the only provision under which the place of assessment upon a notice under s. 22(2) could be determined, in absence of anything to the contrary in the Act, s. 64 applied to an assessment under s. 34 of the Act. The appellant was, therefore, rightly assessed by the Income-tax Officer, Delhi, under s. 64(2) of the Act.
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C. V.Govindarajulu v. Commissioner of Income-tax, Madras, I.L.R. (1949) Mad. 624 and Lakshminarain Bhadani v. Commissioner of Income-tax, Bihar and Orissa, (1951) 20 I.T.R. 594, held inapplicable.
The time specified by the proviso to s. 64(3) could have no

application since the contention in the present case was that the assessment under s. 34 could be made only in Lahore and not in India at all.

Section 23A of the Act, as it then stood, raised only one fiction, and not two, and that was of an income arising on a specific date in the past with the purpose that such income might be included in the income of a share-holder for assessment. That income must, therefore, be deemed to have existed on the date for the purpose of assessment and, if not included in the assessment for the relevant year, must be taken to have actually escaped assessment so as to attract s. 34 of the Act.

Dodworth v. Dale, 20 T. C. 285, D. & G. R. Rankine v. Commissioners of Inland Revenue, 32 T. C. 520 and Chatturam Horliram Ltd. v. Commissioner of Income-tax, Bihar and Orissa, [1955] 2 S.C.R. 290, held inapplicable.

There is no warrant for the proposition that S. 23A of the Act was meant to apply only to cases where pending assessment for any year, an order is made under that section creating a fictional income that year. Such an order could, therefore, be made even after the assessment of the income of the share-holder for the year concerned had already been completed. But S. 23A does not itself provide for any assessment being made and that has to be made under other provisions of the Act authorising assessment including s. 34.

It is not correct to say that s. 23A(1), as it then stood, was beyond the competence of the Legislature and was as such unconstitutional. Under Entry 54 of List I of the Seventh Schedule to the Government of India Act, 1935, the Legislature could pass not only a law imposing a, tax on a person on his own income but also a law preventing him from evading the tax payable on his income and there can be no doubt that s. 23A, properly construed, was meant to prevent such evasion.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 317 of 1955. Appeal by special leave from the judgment and order dated October 18, 1952, of the Income-tax Appellate Tribunal, Calcutta Bench, in Income-tax Appeal No. 807/1950-51. A. V. Viswanatha Sastri and S. C. Mazumdar, for the appellant.

C. K. Daphtary, Solicitor-General of India, K. N. Rajagopal Sastri, R. Ganapathy Iyer, R. H. Dhebar and D. Gupta, for the respondent.

1960. September 2. The Judgment of the Court was delivered by SARKAR J.-In 1944, the appellant was a resident of Lahore. On October 14, 1944, he was assessed to income-tax by the Income-tax Officer, Lahore, for the assessment year 1944-45 on an income of Rs. 49,047. As is well-known, in

August, 1947, India was partitioned and Lahore came to be included in the newly created Dominion of Pakistan and went out of India. After the partition, the appellant shifted to Delhi and was residing there at all material times. The appellant held shares in a company called Indra Singh and Sons Ltd. which had its office at Calcutta. The other shares in that company were held by Indra Singh and Ajaib Singh. The holdings of all the shareholders were equal. An annual general meeting of this company was held on April 17, 1943, in which the accounts for the year ending March 31, 1942, were placed for consideration. The accounts were passed at the meeting but no dividend. was declared though the accounts disclosed large profits.

On June 11, 1947, an Income-tax Officer of Calcutta passed an order under s. 23A of the Income-tax Act that Rs. 14,23,110 being the undistributed portion of the assessable income of the company for the year ending March 31, 1942, after the deductions provided in the section, be deemed to have been distributed as dividend among the three shareholders on the date of the general meeting, that is, April 17, 1943. As a result of this order a sum of Rs. 4,74,370. being his share of the amount directed to be distributed, had under the section, to be included in the income of the appellant for the assessment year 1944-45. The validity of this order was never challenged. The Income-tax Officer, Calcutta, informed the Income-tax Officer, Delhi, of the order made by him under a. 23A. Thereupon the Income-tax Officer, Delhi, on April 10, 1948, issued a notice under a. 34 of the Act to the appellant then residing in Delhi, requiring him to file within thirty-five days, a revised return for the year 1944-45 as a part of his income for that year had escaped assessment. Obviously the notice was on the basis that the said sum of Rs. 4,74,370 had escaped assessment for the year 1944-45. On February 10, 1949, the appellant submitted a revised return under protest and included in it the said sum of Rs. 4,74,370. The Income-tax Officer, Delhi, then reopened the earlier assessment and on March 25, 1949, made a fresh assessment order for 1944-45 assessing the appellant on an income of Rs. 5,23,417. The appellant appealed against this order to the Appellate Assistant Commissioner but his appeal was dismissed. He then appealed to the Income-tax Appellate Tribunal but was again unsuccessful. He has filed the present appeal with special leave of this Court against the judgment and order of the Income-tax Appellate Tribunal.

A preliminary point as to the maintainability of this appeal was taken by the learned Solicitor-General appearing on behalf of the respondent Commissioner of Income-tax, that the appellant having been unsuccessful in availing himself of the other remedy provided in the Act should not be allowed the extraordinary remedy of approaching this Court with special leave. Now, under the Income-tax Act, the appellant could apply to the Tribunal to refer to a High Court any question of law that arose out of the former's decision. The Act itself gave no right of appeal at all from that decision, nor any other remedy against it. The appellant had applied to the Tribunal for an order referring certain questions arising out of its decision to the' High Court at Calcutta but was unsuccessful in getting an order for reasons to be presently stated. The Tribunal was in Calcutta. The appellant, who was in Delhi, asked a firm of income-tax practitioners named S. K. Sawday & Co. in Cal- cutta, to move the Tribunal for an order of reference. Sawday & Co. had the necessary petition and papers prepared. They sent these to the appellant at Delhi by post on January 5,1953, for his signature and the papers reached Delhi on January 7, 1953. The appellant who was then the Defence Minister of the Government of India, was at the time, away from Delhi on official tour. Immediately on his return from tour he signed the papers and on January 21/22, 1953, sent them from Delhi by

post to Sawday & Co. in Calcutta. The papers reached Calcutta on January 24, 1953, but were not delivered to Sawday & Co. before January 28, 1953, due to a postman's default as was admitted by the postal authority concerned. Sawday & Co. filed the petition in the Tribunal on the same date but that was one day too late as it should have been filed on January 27, 1953. The Tribunal thereupon dismissed the application as having been made out of time. The appellant appealed against this dismissal to the High Court at Calcutta but the High Court dismissed the appeal. In these circumstances, the appellant moved this Court for special leave to appeal and asked for condonation of delay in moving this Court, placing before it all the facts which we have earlier mentioned. This Court on a consideration of these facts condoned the delay and granted special leave. There was no attempt by the appellant to overreach or mislead the Court and the Court in its discretion gave the leave. In these circumstances, we are unable to agree with the contention that the appellant is not entitled to proceed with this appeal, because he could have availed himself of the remedy provided by the Act and was by his own conduct, unable to do so. This Court had inspite of this thought fit to grant leave to the appellant to appeal from the decision of the Tribunal. Further the learned counsel for the appellant intends to confine himself to questions of law arising from the Judgment of the Tribunal. We, therefore, see no reason why the appeal should not be heard.

The main question in this appeal is whether the proceedings taken against the appellant under s. 34 of the Act were valid. That section has been amended but we are concerned with it as it stood on April 10, 1948, when the notice under it was issued.

The first point is that the proceedings under s. 34 could not be taken by the Income-tax Officer, Delhi. It is said that the proceedings under that section are only a continuation of the original assessment proceedings, and therefore, it is the Officer who made the original assessment order or his successor in office, who alone could start the fresh proceedings. It is hence contended that it is the Income-tax Officer, Lahore, who could proceed against the appellant under s. 34 and the Income-tax Officer, Delhi, had no jurisdiction to do so. The contention then comes to this that in the circumstances of this case,' no proceedings under s. 34 could be taken against the appellant in India at all.

The learned Solicitor-General said that this was an objection as to the place of assessment under s. 64 of the Act, and could not be entertained as it had not been taken within the time provided under the second proviso to sub- sec. (3) of that section. If that proviso applied to the present case, the appellant had to raise the objection that proceedings under s. 34 could not be taken at Delhi within the thirty-five days Mentioned in the notice under the section. It is said that this had not been done. It seems to us however that the proviso would apply only if an objection to a place of assessment had been taken under s. 64 and the objection that the appellant has taken in this case is not one under that section. That section applies where the assessment can be made in one place or another in India and an objection is taken to one of such places. Here the contention is that the assessment under s. 34 can be made only in Lahore and therefore cannot be made. in India at all. To such a contention s. 64 has no application. The Solicitor General's point must therefore fail. We are however of the opinion that the contention of the appellant is without foundation. Section 34 provides that in the cases mentioned in it, the income may be assessed or reassessed and the provisions of the Act shall, so far as may be, apply accordingly as if the notice issued under the section had been issued under s.

22(2) of the Act. Now the place where an assessment is to be made pursuant to a notice under s.22(2) has to be determined under s. 64. Indeed that is the only provision in the Act for deciding the proper place for any assessment. There is nothing which makes s. 64 inapplicable to an assessment made under s. 34. Therefore, it seems to us clear, that the place where an assessment under s. 34 can be made has to be decided under s. 64. Now the appellant was not carrying on any business, profession or vocation. He was working as the Defence Minister of the Government of India and residing in Delhi. He could be properly assessed by the Income-tax Officer, Delhi, under s. 64(2) if the assessment was the original assessment. This is not in dispute. It follows that no objection can legitimately be taken by the appellant to his assessment under s. 34 by the Income-tax Officer, Delhi. We find nothing in the two cases cited by Mr.Sastri, who appeared for the appellant, to support the contention that in this case the assessment under s. 34 could not have been made in India at all. In neither of these cases any question as to the place of assessment tinder s. 34 or any other section arose. In the first, C. V. Govindarajulu v. Commissioner of Income-tax,, Madras (1), it was held that the proceedings under s. 34 and the original assessment proceedings were not separate and therefore in the former, a penalty could be levied under s. 28 for failure to submit a return pursuant to a general notice under s. 22(1) on which the latter were deemed to have commenced. It does not follow that because the two assessments are not separate for certain purposes, the latter must take place only where the first had been made. In the second, Lakshminarain Bhadani V. Commissioner of Income-tax, Bihar & Orissa (2), this Court held that a proceeding under s. 34 may be taken against a karta of a Hindu undivided family to reopen an original assessment on the family, though in the meantime, there had been a disruption of the family and an order in respect of it had been passed under s. 25A(1) of the Act. It was said that the position was as if the Income-tax Officer was proceeding to assess the (1) I.L.R. (1949) Mad. 624 (2) (1951) 20 I.T.R. 594.

income of the Hindu undivided family as in the year (if assessment. This of course does not mean that the assessment under s. 34 must take place at the place where the original assessment was made or not at all. Then it is said that the Income-tax Officer reassessed the appellant's income under s. 34 on the basis that part of it, namely, the dividend that became liable to be included in the appellant's income under s. 23A, had escaped assessment. It is contended that on a proper reading of s. 34 this would not be a case of income escaping assessment because that section applies to income actually escaping assessment and not to income deemed to have escaped assessment which is all that has happened in the present case. It is said that in order that income may escape assessment there must in fact have been an income. It is also said that in order to apply s. 34 to this case two fictions have to be resorted to, namely, (a) bringing an income into existence where none existed and (b) holding that income has escaped assessment where no income actually did so. It is argued that the language of s. 34 does not permit two fictions being created, and that as the section reopens a closed transaction, it must be strictly construed. Reliance was placed on certain decisions in support of this contention. First, we were referred to two English cases, namely, Dodworth v. Dale (1) and D. & G. R. Rankine v. Commissioners Inland Revenue (2). These cases do not assist the appellant for they were not concerned with a statutory provision like s. 23A on which the present case turns and which requires that an assessee would be deemed to have received a certain income on a specified date in the past and also requires that income to be included in his total income for assessment to tax. The other case to which we were referred was the decision of this Court in

Chatturam Horliram Ltd. V. Commissioner of Income-tax, Bihar and Orissa (3) where it was said that the contention " that the escapement from assessment (1) (1936) 20 T.C. 285. (2) (1952) 32 T.C. 520. (3) [1955] 2 S.C.R. 290, 300-301.

is not to be equated to non-assessment simpliciter, is not without force,". This Court however in the very next sentence proceeded to state clearly that " it is unnecessary to lay down what exactly constitutes `escapement from assessment"'. The actual decision in this case affords no assistance to the appellant and has not been relied on by him. It is clear from what we have read from the judgment in it that it does not lay down a test to decide when an income may be said to have escaped assessment. On its own merits also we are unable to accept the argument of the learned counsel for the appellant. Section 23A requires that on an order being made under it, the undistributed portion of the assessable income of the company for a year as computed for income-tax purposes and after the deductions provided in the section, is to be ',deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting ", being the meeting at which the accounts for the year concerned were passed, and "thereupon, the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income ". The section creates a fictional income arising as on a specified date in the past and it does so for the purpose of that income being included in the income of the shareholders for assessment of their income-tax. The income must therefore be 'deemed to have been in existence on the date mentioned for the purpose of assessment to tax. It is as if it actually existed then. Now if the assessment for the relevant year does not include that income, it has escaped assessment. That is what happened in this case. Therefore the case is one to which a. 34 would clearly apply.

It is said that s. 23A was meant to apply only to cases where pending assessment for any year, an order is made under that section creating a fictional income in that Year. We see no reason however so to restrict the operation of the section: the words in' it do not warrant such restriction. There is no limitation of time as to when an order under B. 23A can be made.

Therefore it can be made at a time when the assessment of the income of the shareholder for the year concerned has been completed. There is no reason why that order should not be given effect to by proceedings duly taken under s.

34. We do not also agree that the rejection of the appellant's present argument will compel us to raise two fictions. There is only one fiction, namely, that raised by s. 23A. That fiction having been raised, the income that has thereby to be deemed to exist must be held to have actually escaped assessment. We are unable to agree that in order to apply s. 34 to an income deemed to exist under s. 23A, we would have to read the former section to cover a case where income has to be deemed to have escaped assessment. If the income had come into existence, and not been assessed, it has escaped assessment; it is not a case where the income has to be deemed to have escaped assessment. In our view, therefore, the present contention of the appellant must fail and the income deemed to have been received by him by virtue of the order made tinder s. 23A on June 11, 1947, must be held to have escaped assessment for the year 1944-45 and his income must therefore be liable to reassessment under s. 34. It is now necessary to refer to one of the reasons on which the judgment

of the Tribunal is based. It was there said that " It was incumbent on the Income-tax Officer, Calcutta' passing the order under s. 23A to have included the sum of Rs. 4,74,370/- in the other assessed income of the assessee and to have recomputed the assessable income and the tax thereon". It was held that " the Income-tax Officer, Delhi, went wrong in having recourse to the provisions of s. 34 and making an assessment thereunder " but that this a mounted to a mere irregularity not vitiating the assessment made under that section. In the end the Tribunal observed,, " Anyhow, the Tribunal is empowered to substitute its own order for that of the Income Tax Officer and acting under that power we assess the assessee under the provisions of See. 23A(1) of the Indian Income-tax Act It seems to us that the Tribunal was wrong in the view that it took. The learned Solicitor-General conceded that this is so. We are unable to agree that an assessment could be made under s. 23A. That section does not provide for any assessment being made. It only talks of the fictional income being included in the total income of the shareholders " for the purpose of assessing his total income". The assessment therefore has to be made under the other provisions of the Act including s. 34, authorising assessments. In our view, the assessment in this case had been properly made by the Income-tax Officer, Delhi, under the pro. visions of s. 34.

Lastly, it is said that a. 23A is unconstitutional inasmuch as it was beyond the competence of the legislature that enacted it. This section has been redrafted and amended several times since it was first enacted in 1930. We are concerned with the section as it stood on June 11, 1947, when the order under it was made in this case. Sub-section (1) of the section in the form that it stood then-and that is the material portion of the section for our purposes-was enacted by Act VII of 1939. It is that sub-section which gave the power to make an order that the undistributed portion of the assessable income of the company shall be deemed to have been distributed as dividends and provided that thereupon the proportionate share thereof of each shareholder shall be' included in his income for assessment. The enactment was by the Central legislature which then derived its competence to legislate from the Government of India Act, 1935. There is no doubt, and neither is it disputed, that sub-section had been enacted under the power contained in entry 54 of List I in the Seventh Schedule to the Government of India Act, 1935. The entry read, " Taxes on income other than agricultural income". The argument of Mr. Sastri is that this entry only authorises legislation for taxing a person on his income; under it a law cannot be made taxing one person on the income of another. Mr. Sastri says that in law a company and its shareholders are different persons--a proposition which is indisputable-and therefore s. 23A is incompetent as it purports to tax the shareholders on the income of the company in which they hold shares, He points out, and this again is not in dispute, that the section does not give a right to a shareholder on an order being made under it, to realise from the company the dividend, which by the order is to be deemed to have been paid to him. He says, and this also seems right, that the income remains the income of the company and a shareholder is taxed on a portion of it representing the dividend deemed to have been paid to him. In spite of all this it seems to us that the legislation was not incompetent. Under entry 54 a law could of course be passed imposing a tax on a person on his own income. It is not disputed that under that entry a law could also be passed to prevent a person from evading the tax payable on his own income. As is well-known the legislative entries have to be read in a very wide manner and so as to include all subsidiary and ancillary matters. So Entry 54 should be read not only as authorising the imposition of a tax but also as authorizing an enactment which prevents the tax imposed being evaded. If it were not to be so read, then the admitted power to tax a person on his own income

might often be made infructuous by ingenious contrivances. Experience has shown that attempts to evade the tax are often made.

Now it seems to us that s. 23A was enacted for preventing such evasion of tax. The conditions of its applicability clearly lead to that conclusion. The first condition is that the company must have distributed as dividend less than sixty per cent of its assessable income after deduction of income-tax and supertax payable by it. The taxing authority must then be satisfied Chat the payment of a dividend or of a larger dividend than that declared, would, in view of losses incurred in earlier years or the smallness of the profit made, be unreasonable. Lastly, the section does not apply to a company in which the public are substantially interested or a subsidiary company of a public company whose shares are held by the parent company or by the nominees thereof The section provides by an explanation as follows:

> For the purpose of this sub-section, a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in the taxable territories or in fact freely transferable by the holders to other members of the public.

> The section thus applies to a company in which at least 75 per cent of the voting power lies in the hands of persons other than the public, which can only mean, a group of persons allied together in the same interest. The company would thus have to be one which is controlled by a group. The group can do what it likes with the affairs of the company, of course, within the bounds of the Companies Act. It lies solely in its hands to decide whether a dividend shall be declared or not. When therefore in spite of there being money reasonably available for the purpose, it decides not to declare a dividend it is clear that it does so because it does not want to take the dividend. Now it may not want to take the dividend if it wants to evade payment of tax thereon. Thus by not declaring the dividend the persons constituting the group in control, could evade payment of super-tax, which, of course, is a form of income- tax. They would be able to evade the super-tax because super-tax is payable on the dividend in the hands of the shareholders even though it may have been paid by the company on the profits out of which the dividend is paid, and because the rate at which super-tax is payable by a company may be lower than the rate at which that tax is payable by other assessees. By providing that in the circumstances mentioned in it, the available assessable income of a company would be deemed to have been distributed as dividend and be taxable in the hands of the shareholders as income received by them, the section would prevent the members of such a group from evading by the exercise of their controlling power over the company, payment of tax

on income that would have come to them. That being so, the section would be within entry 54. In conceivable circumstances the section may work hardship on members of the public who hold shares in such a company but that would not take the section outside the competence of the legislature. It would still be an enactment preventing evasion of tax. Considerations of hardship are irrelevant for deciding questions of legislative competence. It is further quite clear that in the absence of a provision like s. 23A it is possible so to manipulate the affairs of a company of this kind as to prevent the undistributed profits from ever being taxed and experience seems to have shown that this has often happened. The following passage from Simon's Income Tax, 2nd Edn., Vol. 3, p. 341, fully illustrates the situation :

" Generally speaking, surtax is charged only on individuals, not on companies or other bodies corporate. Various devices have been adopted from time to time to enable the individual to avoid surtax on his real total income or on a portion of it, and one method involved the formation of what is popularly called a 'one-man company'. The individual transferred his assets, in exchange for shares, to a limited company, specially registered for the purpose, which thereafter received the income from the assets concerned. The individual's total income for tax purposes was then limited to the amount of the dividends distributed to him as practically the only shareholder, which distribution was in his own control. The balance of the income, which was not so distributed, remained with the company to form, in effect, a fund of savings accumulated from income which had not immediately attracted surtax. Should the individual wish to avail himself of the use of any part of these savings he could effect this by borrowing from the company, any interest payable by him going to swell the savings fund; and at any time the individual could acquire the whole balance of the fund in the character of capital by putting the company into liquidation."

The section prevents the evasion of tax by, among others, the means mentioned by Simon.

The learned Solicitor-General sought to support the competence of the legislature to enact the section also on another ground. He said that entry 54 permitted tax on income and contended that it. authorised taxing of A on the income of B. He said that, where a shareholder was taxed on the income of the company, the two being considered separate legal entities, the tax was none the less on income though the burden of the tax was put on one to whom the income had not accrued or by whom it had not been received and so was within the scope of entry 54. In support of this contention he referred to B. M. Amina Umma v. Income Tax Officer. Kozhikode (1), Janab Jameelamma v. The Income-tax'Officer, Nagapattnam (2) and C. W. Spencer v. Income Tax Officer(3). As earlier stated, Mr. Sastri disputes the correctness of this contention. We do not consider it necessary to pronounce on this question or as to the correctness of the decisions cited so far as they support it. In our view, the legislative competence to enact the section can be clearly upheld on the ground that it was to-prevent evasion of in- come-tax and that would be enough to dispose of the argument advanced by Mr. Sastri that the section was an incompetent piece of legislation.

This appeal therefore fails and it is dismissed with Costs. Appeal dismissed.

(1) (1954) 26 I.T.R. 137.

(2) (1955) 29 I.T.R. 246.

(3) (1956) 31 I.T.R. 107.