Purshottamdas Thakurdas vs Commissioner Of Income-Tax, Bombay on 4 December, 1962

Equivalent citations: 1963 AIR 1066, 1963 SCR SUPL. (2) 668, AIR 1963 SUPREME COURT 1066

Author: S.K. Das

Bench: S.K. Das, J.L. Kapur, A.K. Sarkar, M. Hidayatullah, Raghubar Dayal

PETITIONER:
PURSHOTTAMDAS THAKURDAS

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, BOMBAY

DATE OF JUDGMENT:
04/12/1962

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
KAPUR, J.L.
SARKAR, A.K.
HIDAYATULLAH, M.
DAYAL, RAGHUBAR

CITATION:
1963 AIR 1066 1963 SCR Supl. (2) 668

ACT:
Income Tax-Advance payment of tax-Dividend income deducted from total income-If allowable-"Deduction of income-tax at the time of payment", Meaning of-Company paying tax on dividend-Payment of dividend to share-holder--Whether tax deducted at the time of payment-Indian Income-tax Act, 1922 (11 of 1922), ss. 16, 18, 18-A, 49-B.

HEADNOTE:
The assessee submitted his estimate of income for advance payment of tax under s. 18-A, in which he did not include his dividend income. The Income-tax Officer held that under s. 18-A(2) the assessee was bound to include in his

estimate, and to pay advance super-tax, on his dividend income. Since that was not done and the advance tax paid was less than 800% of the tax determined on regular assessment, he levied penal interest under s. 18-A(6) in respect of the super-tax payable on the dividend income. The assessee contended (i) that the dividend income was income in respect of which provision was made under s. 18 for "deduction of income-tax at the time of payment" and as such s. 18-A was not applicable to it, and (ii) that since s. 18(5) was applicable to dividend income the penal provisions of s. 18-A(6) were not attracted.

Held, (per Das, Kapur and Hidayatullah, jj., Sarkar and Dayal,JJ., dissenting) that s. 18(5) read with ss. 16(2) and 49-B provided for the deduction 'of income-tax at the time of payment" in respect of dividend income and therefore s. 18.A did not apply to such income. A shareholder's right to the dividend arises upon its declaration. Under the leg,-Al fiction

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introduced by s. 49-B, when dividend is paid to a shareholder 'by a company which is assessed to tax, the income-tax (but not super-tax) in respect of such dividend is deemed to have been paid by the shareholder himself and credit is given therefore to him under s. 18(5). If the shareholder was deemed to have paid the tax himself at the time when the company paid the dividend, the payment was "deduction of income-tax at the time of payment" within the meaning of s. 18-A(1).

Per Sarkar and Dayal, JJ-The dividend income should have been included in the estimate of income and the penal interest was properly levied on the assessee. Dividend income is not one on which tax was deducted at the time of payment under s. 18 Payment of tax by the assessee, fictional or otherwise, on income received by him was not a deduction of tax under s. 18 by the person who paid the income to the assessee. for purposes of s. 18-A there had to be a deduction under s.18; deduction under other provisions was not relevant. Under s. 18(5) credit for the tax paid by the company was to be given to the shareholder not at the time of payment of the dividend but later at the time of assessment, Further, the provisions of s. 18-A(6) were applicable in respect of dividend income. The words "Income to which provisions of s. 18 do not apply" in s. 18,A(6) refer to that type of income in respect of which s. 18 provides for deduction of tax at the source and they do not include dividend income.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 597 of 1961. Appeal from the judgment and order dated July 3, 1959, of the Bombay High Court in 1. T. Reference No. 45 of 1958. A. V.

Viswanatha Sastri, N. A. Palkhivala, J. B. Daduchanji, O. C. Mathur and Ravinder Narain, for the appellant.

K.N. Rajagopal Sastri and R. N. Sachthey, for the respondent.

1962. December 4. The judgment of Das, Kapur and Hidayatullah, jj., was delivered by Das, J. The judgment of Sarkar and Dayal, jj., was delivered by Sarkar, J.

S.K. DAs, J.-This is an appeal on a certificate of fitness granted by the High Court of Bombay under s. 66.A(2) of the Indian Income-tax Act, 1922.

The short facts giving rise to the appeal are these. The original assessee was Purshottamdas Thakurdas, a well-known businessman of Bombay. He died sometime after the proceedings in the High Court had terminated and the appellants herein are his legal representatives. As nothing turns upon the distinction between the assessee an& his legal representatives in this case, we shall ignore it for the purpose of this judgment. By a notice issued under s. 18-A(1) of the Act the Income-tax Officer concerned required the assessee to make advance payment of tax in respect of the assessment year 1947-1948. On September 15, 1946, the assessee submitted an estimate of his income under sub-s, (2) of s. 18-A. In this estimate the assessee showed his total income at Rs. 4,64,000/-. He deducted the sum of Rs. 3,64,000/-, stated to be his dividend income, on the ground that s. 18 of the Act applied to such income. After claiming credit for Rs. 10,000/- on the ground of double taxation relief, the assessee estimated the advance tax payable by him at Rs. 2,67,752/-. The Income-tax Officer took the view that under s. 18-A(2) of the Act the assessee was bound to include in his estimate, and to pay advance super-tax on, his dividend income. Since that was not done and the advance tax paid was less than eighty per cent of the tax determined on the basis of the regular assessment, he levied penal interest on the assessee under sub-s. (6) of s. 18-A of the Act in respect of the super-tax payable on the dividend income. There was an appeal to the Appellate Assistant Commissioner who confirmed the view of the Income- tax Officer. On a further appeal, the Appellate Tribunal held by its order dated October 25, 1957, that sub-s. (6) of s. 18-A did not apply to dividend income and the assessee was not liable to pay penal interest in respect of the dividend income. The Commissioner of Income tax, Bombay City, respondent before us, moved the Appellate Tribunal to state a case to the High Court of Bombay on the following question of law which arose out of the Tribunal's order :

> "Whether on the facts and circumstances of the case, the assessee is liable to pay interest in respect of dividend income as provided under s. 18-A(6) of the Income-tax Act The Tribunal stated a case on the aforesaid question and the reference made by the Tribunal was dealt with by a Division Bench of the High Court of Bombay by its judgment dated July 3, 1959. The question framed by the Tribunal was slightly altered by the High Court , but the alteration made is not material for our purpose. Mr. justice J. C. Shah came to the conclusion that dividend income was not income in respect of which s. 18 made any provision "'for deduction of income-tax at the time of payment" within the meaning of sub-s. (1) of S. 18-A and though the phraseology used in sub-s. (6) of s.18A was slightly different from the phraseology used in sub s.

(1) of s. 18-A, the two sub- sections substantially had the same meaning. Accordingly, he answered the question in the affirmative and against the assessee. Mr. justice S. T. Desai also gave the same answer to the question, though he reached a somewhat different conclusion. He held that on a proper construction of sub-s. (6) of s. 18-A an assessee was liable to pay interest in respect of tax on dividend income to the extent that sub-s. (5) of s. 18 did not apply to the same. He said "An assessee who is called upon to make advance payment of tax under s. 18-A (1) may under sub-s. (2) of that section pay such amount as accords with his own estimate, If he excludes the amount of super-tax on dividend income from his estimate he takes the risk of the application of the ratio of eighty per cent resulting in a shortfall and he would have to pay interest "upon the amount by which the tax so paid falls short of the said eighty per cent." The eighty per cent would be of the amount of tax determined on the basis of the regular assessment. so far as such tax relates to income to which the provisions of s. 18 do not apply. The provisions of s. 18(5) as I have already pointed out do not apply to super-tax and the amount of super-tax on the dividend income must be included and taken into consideration in the computation necessary for the purpose of fixing the quantum of tax to which the ratio of eighty per cent is to be applied. I would, therefore, answer the question as framed by us in the affirmative."

The assessee then moved the High Court for a certificate of fitness and having obtained such certificate preferred this appeal to this court.

On behalf of the assessee, the contention is that the answer given by the High Court to the question referred to it is not correct and this contention is based on two grounds. The first ground is that on a proper construction of sub-s. (2) of s. 16, sub-s. (5) of s. 18 and s. 49-B of the Act, dividend income is income in respect of which provision is made under s. 18 for "'deduction of income-tax at the time of payment" and therefore s. 18-A is not attracted to it. The second ground which has been taken in the alternative is that sub-s. (6) of s. 18-A clearly states that where in any year an assessee has paid tax under sub-s. (2) on the basis of his own estimate and the tax so paid is less than eighty per cent of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of s. 18 do not apply, simple interest at the rate of; six per cent per annum etc. shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent, It is submitted that thephraseology used in sub. s. (6) of s. 18-A is "to whichthe provisions of s. 18 do not apply. Thealternative argument is that sub-s. (5) of s. 18 is undoubtedly a provision which applies to dividend income and therefore under sub-s. (6) of s. 18-A the assessee was not liable to pay penal interest by his failure to pay advance tax On that head of income. Put differently, the alternative argument is that sub-s. (6) of s. 18-A refers to a category of income wider than what is referred to in sub- s. (1) of s. 18-A and if there is some provision in s. 18 relating to a head of income, namely, dividend income, (though that provision may not amount to deduction of income-tax at the time of payment'), failure to pay advance tax- on that head of account will not attract the penal provisions of sub-s. (6) of s. 18-A. We proceed now to consider these two arguments advanced on behalf of the appellants and the replies thereto on behalf of the respondent.

First as to the argument that on a, proper construction of sub-s. (2) of s. 16, sub-s. (5) of s. 1 8 and s. 49-B of the Act, dividend income is income in respect of which provision is made under s. 18 for "deduction of income-tax at the time of payment." To appreciate this argument it is necessary first to refer to the scheme of ss. 18 and 18-A of the Act. Under the Indian Income-tax Act 1922, tax is assessed and paid in the succeeding year upon the results of the previous year of account. The legislature has by enactings. 18-A, made a provision for imposing a liability uponthe tax- payers who had been previously assessedand even upon those who had not been so assessedto make advance payment of tax in respect of income, exceeding a certain amount, for which provision is not made under s. 18 for deduction of tax at the time of payment. Sections 18 and 18-A between themselves exhaust all categories of taxable income. The Act provides for two modes of collecting taxes ...direct levy and levy by deduction at the source. The ordinary method of collection is-direct collection of the tax from the assessee which is dealt with by. ss.,19, 45 and-46. Deduction of tax at the source is provided for only in certain specified cases mentioned in s. 18. Sub-s. (2) of s. 18 relates to salaries and makes the, person responsible for paying any income chargeable under the head salaries" to make deduction of income-tax and super-tax on the amount payable at a rate representing the average of the rates applicable to the estimated total income of the assessee under that head. Sub-s. (3) relates to interest on securities and makes the person responsible for paying any income chargeableunder the head ",,interest on securities".. unless otherwise prescribed in the case of any security of the Central Government, to deduct at the time of payment income-tax but not super-tax on the amount of interest payable at the maximum rate. Sub-ss. (3-A) to (3- E) relate to certain other cases which are not very material for our purpose. We need not therefore refer to those sub-sections. Sub. S. (4) of s. 18 says that all sums deducted in accordance with the provisions of this section shall, for purposes of computing the income of an assessee, be deemed to be income received. Then there is sub-s. (5) which in so far as it is relevant for our purpose is in these terms "Any deduction made and paid to the account of the Central Government in accordance with the provisions of this section and any sum which a dividend has been increased under sub-section (2) of section 16 shall be treated as a payment of income.-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor on the production of the certificate, furnished under subsection (9) or section 30, as the case may be in the assessment, if any, made for the following year under,this Act Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund:

> xx xx xx xx xx xx xx xx Put briefly, the scheme of s. 18 is to provide for deduction of income-tax at the source in respect of certain categories of income. With regard to two of the categories, namely, ""salaries" and "interest on securities, there is no difficult. The difficulty arises with regard to the category of income, referred. to in sub-s.(5) of s.18,:
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> namely, dividend income, and to this difficulty we shall come later.
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> S.18-A which was inserted in 1944 deals with advance payment of tax. It was introduced as a war measure probably to combat inflation, but, like many other

innovations in taxation legislation it has outlived the exigency which necessitated it. The section applies to those assessees whose total income in the latest assessment, and also to those hitherto unassessed whose total income of the previous year, exceeded by a certain sum the maximum amount not chargeable to tax. The section attempts to reconcile the principle of advance payment of tax with the ,scheme of the Act which is to tax the income of the previous year. The basis of the section is the principle of ""pay as you earn that is, paying tax 'by instalments in respect of the income of the very year in which the tax is paid. Sub.s. (1) provides for the payment of tax in respect of the income of " the latest previous year" while under sub.s. (II) the tax so paid is treated as having been paid in respect of the income of the year of payment and credit therefore is given to the assessee in the regular assessment made in the next financial year. The 'advance" payment 'of taxis only provisional, and if after the regular assessment is made the tax paid in advance is found to be in excess of the tax payable, the assessee would be entitled to a refund of such excess. Further, it is worthy of note that the provision for advance payment of tax under s. 18-A is only in respect of income from which the tax is not deductible at the source, under s. 18. Where the tax is deductible at the source, that in itself amounts to advance payment of tax and therefore such income is left out of the purview of the section. Sub-s. (2) of s. 18-A enables an assessee to make his own estimate if in his opinion, the income of the year is likely to be less than that on which he has been asked to make advance payment of tax' in accordance with the provisions contained in sub-s. (1). Sub-s. (6) of S. 18-A so far as it is material for our purpose is in these terms "Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of section 18 do not apply and so far as it it not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of six per cent per annum from the 1st day of January in the financial year in which the tax was paid up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent xx xx xx xx xx xx xx xx XX.

It provides for cases where the assesee's estimate turns out to be too low and it lays down inter alia that where an, assessee has paid advance tax under sub-s. (2) and the amount so paid is less than eighty per cent of the final assessment of his income for the particular year, he is liable to pay interest at six per cent. There is however the necessary qualification that this is in the context of "income to which the provisions of s. 18 do not apply. "' Having regard- to the scheme of ss. 18 and 18A explained above, the first question before us is this: can it be said that sub-s. (5) of s. 18 in its true scope and effect treats dividend income as income from which a deduction of income- tax has been made at the time of payment of the dividend ? The contention on behalf of the assessee is that sub-s. (5) of s. 18 read with sub-s. (2) of s. 16 and s. 49-B has that 'effect. The argument on behalf of the respondent is that it has not that effect. In our opinion the contention urged on behalf of the assessee is correct. Sub.s. (2) of s. 16 declares in the first part thereof that any dividend shall be

deemed to be income of the year in which it is paid etc. regardless of the question as, to when the profits out of which the dividend is paid were earned. A shareholder's right to dividend arises upon its declaration. Under the second part of the sub-section, the net dividend paid to the shareholder is to be ",grossed up" before in., clusion in the shareholder's total income, by adding thereto the amount of income-tax paid by the company. In general law the company is chargeable to tax on its profits as a distinct taxable entity and it pays the tax in discharge of its own liability and not on behalf of or as agent for its shareholder-. This aspect of the matter has been rightly emphasised by learned counsel for the respondent in his reply. While it is true that the company pays its own tax, a legal fiction is introduced by s. 49-B of the Act. Under that section when a dividend is paid to a shareholder by a company which is assessed to tax, the income-tax (but not super-tax) in respect of such dividend is deemed to have been paid by the shareholder himself Since the income-tax in respect of the dividend is deemed under s. 49-B to have by been paid by the shareholder himself on his own income, though in reality it was tax paid by the company in discharge of its own liability, credit is given therefore to the share. holder in the assessment, under sub-s. (5) of s. 18. He is not liable to pay income-tax again in respect of the dividend and may claim a refund under s. 48, if the maximum rate of income-tax, which is applicable to companies, is not applicable to him The combined effect of sub-s. (2) of s. 16, s. 49B and sub-s. (5) of s. 18 is that the tax-free dividend is not really a dividend of the amount received, but a dividend of a larger sum less the tax thereon, and as in the case of tax-free salaries and tax- free securities, it is the gross amount which is included in the shareholder's total income, because the income-tax paid by the company remains part of the income derived from the shareholding. If this be the true effect of the section referred to above, then s. 18 in sub-s. (5) does provide "'for deduction of income-tax at the time of payment" within the meaning of that clause in sub-s. (1) of s. 18-A. Learned counsel for the respondent has, however, drawn our attention to that part of subs. (5) of s. IS which refers to ',any deduction made and paid to the account of the Central Government in accordance with the provisions of this section" and "any sum by which a dividend has been increased under sub-s. (2) of s. 16." His argument is that the sub-section talks of two different matters : one is deduction of tax referred to in the earlier sub-sections and the other is addition of a sum to the dividend. These two, according to learned counsel, stand on a different footing; one is in reality "'deduction of income-tax at the time of payment" and the other, namely, the sum added to dividend income under sub-s. (2) of s. 16, is not really "'deduction of income-tax at the time of payment" but is included in the sub-section merely for the purpose of giving credit to the shareholder for the amount which has been added to his dividend. We are of opinion that this line of argument does not give full effect to the legal fiction created by s. 49-B under which the tax paid by the company is deemed to have been paid by the shareholder himself in respect of his dividend income grossed up under sub-s. (2) of s. 16. If the shareholder is deemed to have paid the tax himself at the time when the company.paid the dividend, we do not see why this payment is not "'deduction of income-tax at the time of payment" within the meaning of that clause in sub-s. (1) of s. 18A. Deduction at the source is only a mode of collecting tax from the person from whose income the deduction is made-. The tax paid by the company at the time of payment of the dividend is treated as part of the income of the shareholder and the gross amount has to be included in his total income; on the same principle, the tax deducted at the source and paid to the Government is treated as having been paid by the shareholder himself. In this view of the matter, sub-s. (5) merely works out the principle of sub-s. (41 of s. 18, namely, that all sums deducted in accordance with the provisions of the section shall, for the purpose of computing the

income of an assessee, be deemed to be income received.

There was some argument before us as to the omission of the word "shareholder" in the first proviso to sub-s. (5) of s.

18. The Amending Act of 1939 which added the reference to the "'shareholder" in the substantive part of the sub- section did not make similar addition to the first two provisos; whether this was an over-sight, as one commentator has said, or not is not a matter which need be decided in this case. We have rested our conclusion on the substantive part of sub-s. (5).

In the view which we have taken on the main argument urged on behalf of the appellant, s. 18-A is not attracted to the dividend income of the assessee in this case. The assessee was not therefore liable to penal interest under sub-s. (6) of s. 18-A. It becomes unnecessary, therefore, to decide this case on the alternative argument presented on behalf of the appellant which is based on the phraseology of sub-s. (6). We need only point out that sub-s. (6) uses the phraseology "income to which the provisions of s. 18 do not apply." It is difficult to see how it can be said that sub- s. (5) of s. 18 does not "apply" to dividend income. It refers to dividend income in express terms. The argument on behalf of the respondent is that sub-s. (6) of s. 18A will be unworkable in the matter of dividend income., unless it has the same meaning as in sub s. (1). Learned counsel has relied on two decisions of this court : Commissioner of Income-tax v. Teja Singh (1) and Gursahai Saigal v. The Commissioner of Income-tax, Punjab (2). The first decision lays down that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which the fiction can operate..... a decision which is really against the respondent on the main argument. The second decision related to sub-s. (8) of s. 18-A and proceeded on the rule that it is proper to give a machinery provision an interpretation which makes it workable. We do not think that sub-s. (6) (1) [1959] Supp. 1 S.C.R. 394.

(2) [1963] 48 I.T.R. 1.

of s. 18-A will be unworkable, even if it refers to an income wider in category than that referred to in sub-s. (1).

It is unnecessary, however, to go into this point more elaborately. Our conclusion is that sub-s. (5) of s. 18 read with sub-s. (2) of s. 16 and s. 49-B provides for "'deduction of income-tax at the time of payment" in respect of dividend income; therefore, s. 18-A does not apply to such income.

We would accordingly allow this appeal, set aside the judgment of the High Court, and answer the question referred to the High Court in the negative and in favour of the assessee: The appellants will be entitled to their costs of this court an in the High Court;

SARKAR, J.-Under.the Income-tax Act, 1922, the usual rule is to charge tax for a year on the income of the previous year. Section 18A of the Act makes a departure from this usual rule and provides for advance payment of tax, that is, payment of tax on income during the year in which the income is earned. The question in this appeal is as to the interpretation of certain provisions in s. 18A and of a

few other sections of the Act. The contention advanced in this case can be appreciated only after these provisions have been referred to.

Sub-section (1) of s. 18A states, "In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income- tax Officer may..... require an assessee to pay quarterly..... an amount equal to one quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed." This liability to pay arises only however if the total income of the latest previous year exceeds a certain amount mentioned in the subsection. Under this sub-section, therefore, the amount demanded as payment of tax in advance is calculated on income found in a previous assessment. Now it may so happen that the assessee thinks that his income for the period for which the demand had been made would be less than his income in that previous assessment. Sub- section (2) provides that in such a case the assessee may "send to the Income-tax Officer an estimate of the tax payable by him..... and shall pay such amount as accords with his estimate in equal instalments..... So under sub-s.(2) the assessee is given the liberty to make his own estimate of the tax payable in advance instead of paying according to a previous regular assessment by the revenue authorities. As in the case of sub-s. (1), in making the estimate of the tax under sub-s. (2), the assessee is only to take into account income in respect of which provision is not made under s. 18 for deduction of income-tax at the time of payment. Sub-section (3) provides for the case of an assessee who has never been assessed before but whose total income is likely to exceed the amount upon which tax is payable in advance under sub-s. (1). it requires such an assessee to "send to the Income-tax Officer an estimate of the tax payable by him on that art of his income to which the provisions of S. 18 do not apply", and to pay that amount on certain specified dates. Here also the assessee makes his own assessment. Payment of tax in advance under sub-ss. (1), (2) or (3) is only provisional and the assessee would be entitled to a refund if on regular assessment after the year it is found that he had paid more than he is liable to pay; or he may be called upon to pay more if he had 'paid less than what is due from him. As the responsibility for making the assessments under sub- ss. (2) and (3) is on the assessee, sub-s. (6) is intended to provide a machinery whereby the assessee is put under a certain disadvantage if it is found that his estimate is erroneous beyond a certain limit. This appeal turns largely on this sub-section and, so far as relevant, it is in these terms "Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the tax so paid is less than eighty percent of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of section 18 do not apply..... simple interest at the rate of six percent per annum..... shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent." This sub-section also prescribes the period for which the interest payable under it is to be calculated but it is not necessary to trouble ourselves with such period in this appeal.

Now, Purshottamdas Thakurdas, the assessee in this case, sent an estimate under sub-s. (2) of, s. 18A of the tax payable by him in advance in the year 1947-48. In that estimate he did not include the dividends received on shares held by him. Upon regular assessment it was found that the tax estimated by him was less than eighty per cent of the regular assessment and on this shortfall he was held liable to pay interest under sub-s. (6) of s. 18A. The shortfall would not have arisen if the

assessee had taken the dividends into account in making the estimate of the tax payable by him. Against this decision the assessee appealed to the Appellate Assistant Commissioner but his appeal failed. He then appealed to the Income-tax Appellate Tribu- nal and was successful there. Thereafter, at the instance of the respondent Commissioner of Income-tax, the Tribunal referred under s. 66 (1) of the Act the following questions for the decision of the High Court.

> "Whether on the facts and circumstances of the case the assessee is liable to pay interest in respect of dividend income as provided under Section 18A(6) of the Income-tax Act?. The High Court answered the question in the affirmative though the reasons upon which the learned judges constituting the bench deciding the case based themselves were somewhat different. The assessee has now come to this Court in further appeal. Pending the appeal here, the assessee died and his legal representatives have been substituted in his place and are the appellants now. The real question in, this appeal is whether in making an estimate under s. 18A (2) of the tax payable by him, the assessee should have taken into account the dividends received by him. Now, it is not in dispute that in making this estimate only that income "in respect of which provision is not made under s. 18 for deduction of income- tax at the time of payment" is to be taken into account. Learned counsel for the appellants contends that dividend is income in respect of which provision is made under s. 18 for deduction of income-tax at the time of payment. If this contention is sound, then of course no interest is payable under s. 18A (6).
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> Now, the appellants' contention was based on sub-s. (2) of s. 16, sub-s. (5) of s. 18 and s. 49B of the Act. The first of these, that is, sub-s. (2) of s. 16, says that for the purpose of inclusion in the total income of an assessee, a dividend shall be deemed to be income of the previous year in which it is paid and shall be increased in a certain manner, and without going into the question of the increase in great detail, which would be unnecessary for the purposes of this case, it would perhaps be right to say that the increase is to be substantially by such amount as would be payable by the company as income-tax on the amount of the dividend at the rate applicable to it in the financial year in which the dividend is paid. Sub-section (5) of s. 18 provides.
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> "Any deduction made and paid to the account of the Central Government in accordance with the provisions of this section and any sum by which a dividend has been increased under sub- section (2) of section 16 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor on the production of the certificate furnished under sub-section (9) or section 20, as the case may be, in the assessment, if any, made for the following year under this Act;"

Lastly, s. 49B states that "Where any dividend has been paid..... or deemed to have been paid..... to any of the persons specified in Section 3 who is a shareholder.... ...such person shall, if the dividend is included in his total income, be deemed in respect of such dividend himself to have paid

the income-tax (exclusive of super-tax) of an amount equal to the sum by which the dividend had been increased under sub-section (2) of section

16."

Now, the contention of the learned counsel for the appellants is that as a result of the two provisions last referred to, there is a fictional deduction of tax on dividends which fiction must be given effect to and, therefore, in making an estimate of income under s. 18A (2) dividends have to be excluded and they have to be treated in view of the fiction, as income in respect of which tax has been deducted at the time of payment.

We are wholly unable to accept this argument All that the provisions on which the learned counsel for the appellants relies, show is that a shareholder who received dividends on his shares is entitled in his assessment to have a certain sum.. paid or payable as tax by the company, treated as paid as tax on his behalf and to require that sum to be deemed to have been paid as tax by himself. We are not concerned with payment of tax by or on behalf of the assessee. We are concerned with income, income-tax on which has been deducted at the time of payment by the payer of it under s. 18. Payment of tax by the assessee or on his behalf is not deduction of tax on the income by the payer of that income. We are wholly unable to agree that payment of tax by the assessee, fictional or otherwise, on income received by him is in any sense a deduction of tax under s. 19 by the person who pays the income to the assessee. Clearly there is no deduction as contemplated by s. 18. We do not see that ss. 16 (2), 18(5), and 49B require any fiction of a deduction under s. 18 to be raised. Indeed s. 18(5) by mentioning expressly and separately "Any deduction made..... in accordance with..... this section" and "'any sum by which a dividend has been increased under sub- section (2) of section 16" shows that these two are different, or, in other words, that the increased amount is not a deduction under s. 18. It is important also to remember that for s. 18A(1), (2) and (3) there has to be a deduction under s. 18 to exclude a part of the income; deduction under other provisions will not do. Then again, under s. 18(5) an assessee is entitled to credit for the amount to be added to the dividend under s. 16(2) as tax paid on his behalf but this only at the time of the assessment, if any.. for the following year. Obviously, there is no question of giving any credit till assessment later, that is to say, later than the time of payment of the dividend to the assessee. This again shows-that dividends are not income in respect of which tax is deducted under s. 18 at the time of payment. We would also point out that if there is no assessment of the assessee, then no tax can be treated as having been paid by him. The position under s. 49B is the same. If tax is deducted at the source under s. 18, it would be deducted in all cases and the deduction would not depend on any assessment. This is a further reason for saying that dividends are not income on which tax is deducted at the time of payment under s. 18. The appellants then contend that even if dividends are not income from which tax is deducted at the time of payment, still no interest is chargeable in this case under s. 18A(6) for another reason. It was said that in finding out the shortfall under subs. (6) of s. 18A you have to compare the amount of tax paid by an assessee on his own estimate with the amount of tax ascertained on the regular assessment taking into account only that part of the income "'to which the provisions of section 18 do not apply." Hence it is contended that in ascertaining for the purpose of this sub- section the tax payable on regular assessment that part of the assessee's income should be kept out of consideration to which the provisions of S. 18

apply. Then it is pointed out that sub-s. (5) of that section applies to income received in the shape of dividends. Therefore, in finding out the amount of tax payable on regular assessment under sub-s. (6) of s. 18A, dividends have to be kept out of account and if that is done, then the shortfall would disappear. It is true that if the dividends were excluded from the regular assessment as also the estimate, then there would be no shortfall.

Now, it seems to us that this argument is fallacious. The words are ""tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of s. 18 do not apply". Obviously, these words refer to tax on income of a certain type, namely, income of any one of the different varieties mentioned in any of the provisions in s. 18. Only income of such types is to be left out of consideration for the purpose of making the regular assessment under s. 18A (6). Let us turn to s.

18. It consists of a very large number of sub-sections. Sub-section (1) has been omitted. We may also leave out of consideration sub-ss. (2A), (2B), (4) and (6) to (9), for they do not deal with any particular kind of income which has not been dealt with in the other sections. Each of the rest of the sub-sections, excepting sub-s. (5), deals with deduction of tax at the source from one particular kind of income. In some of the cases, both income-tax and super-tax are deducted while in others, only income-tax is deducted. It is not necessary to discuss this distinction for the purpose of this judgment. We will now have to refer to the various sub-sections dealing with deductions from different kinds of income. Sub-section (2) deals with deduction from salaries, sub-s. (3) from interest on securities in the case of residents, sub-s. (3A) from interest on securities in the case of non-residents, sub-s. (3B) from interest not being interest on securities or any other sum chargeable under the provisions of this Act in the case of non- residents, sub-s. (30) from any sum chargeable under this Act other than interest payable to a non-resident and sub-s. (3D) from dividends payable to nonresidents. As the section stood at the relevant time, there was no provision in it for deduction of income-tax from dividends paid to a resident shareholder. Indeed, it is because of this that all this argument has arisen. Sub-section (5), it would have been noticed, does not deal with any particular or individual type of income but it deals with all the various kinds of income mentioned earlier as also with dividends payable to a resident. Therefore, it seems to us that this sub-section is not one of those provisions in s. 18 which is contemplated in s. 18A (6). It does not particularise any kind of income which has to be kept out of account in considering the amount due on regular assessment under sub-s. (6) of s. 18A. It seems to us, therefore, that the words in that subsection now under discussion refer to the provisions of s. 18 which specify particular kinds of income and provide for deduction of tax from them.

It is clear that any other view of the matter would produce anomalous results which could not have been intended. In the view that we have taken on the first contention of the appellants, it is obvious that under sub-s. (1) of s. 18A dividend income cannot be left out of account for the purpose of calculating tax payable in advance. Under sub-s. (2) the position 'is the same. Now if sub-s. (2) requires dividend income to be taken into account in making an estimate, then how is that requirement to be enforced if interest under sub-s. (6) is not made payable on the failure to take dividends into account. Question of interest under sub-s. (6) arises only on regular assessment. The amount found due on regular assessment can be realised in the usual way but that would not enable

the obligation imposed by sub- s. (2), namely, payment in advance, to be enforced. On such reading, there would be no effective provision for payment of tax in advance in a case where the assessee makes his own estimate. That could not have been intended. It is of interest to note that sub-s. (3) contains the same words "'income to which the provisions of s. 18 do not apply". Now if these words are interpreted in the way suggested by the appellants, then in a case under this sub- section dividends need not be included in the income for the purpose of computation of tax payable in advance. But clearly dividends would be liable to be included in cases where sub-s. (1) or (2) applies. It is impossible to imagine that the legislature could have intended to provide differently for a case coming under sub-s. (3). As we have already said, the main purpose of s. 18 is to provide for deduction of tax at the source. Therefore, it is correct to interpret the words "'income to which provisions of s. 18 do not apply" as referring to that type of income in respect of which s. 18 provides for deduction of tax at the source. That fits in also with the scheme of s. 18A. If once tax has been deducted, then no question of paying tax on it again in advance or otherwise would arise. For all these reasons, it seems to us that income contemplated in the words "'income to which provisions of s. 18 do not apply" does not include dividends payable to a resident assessee.

For these reasons we would dismiss the appeal with costs. By COURT: In accordance with the opinion of the majority, this appeal is allowed with costs.