Supreme Court of India
Commissioner Of Income-Tax, West ... vs Central India Industries Ltd on 7 September, 1971
Equivalent citations: 1972 AIR 397, 1972 SCR (1) 619
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
COMMISSIONER OF INCOME-TAX, WEST BENGAL

Vs.

RESPONDENT:
CENTRAL INDIA INDUSTRIES LTD.

DATE OF JUDGMENT07/09/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1972 AIR 397 1972 SCR (1) 619

ACT:
Income tax Act 1922, s. 16(2)--Parent company distributing dividend to assessee company partly in cash and partly in scrips-In computing income of assessee company from dividend said scrips whether to be valued at face value or market value-Considerations.

HEADNOTE:
The assessee company was holding certain shares in an investment company which was its parent company. The amount of dividend receivable by the assessee company was paid to it partly in cash and partly in share scrips of two other companies. The relevant assessment year was 1959-60. For the purpose of assessment under the Income-tax Act, 1922 the Income-tax Officer valued those shares as per their market value on the date on which those shares became the assets of the assessee company. He therefore added to the amount of dividend purported to have been declared a sum of Rs. 61,500/- in computing the assessable income of the assessee company. The Appellant Assistant commissioner upheld the order of the Income-tax Officer and rejected the contention of the assessee company that those shares should be valued as per their face value. The Tribunal allowed the assessee's appeal on the grounds that : (i) the distribution of share scrips was not a distribution of dividend, (ii) the

share scrips received by the assessee company had been valued at their face value in the hands of the parent company for the purpose of assessment of its profits and (iii) the assessee company had not sold the shares and so there could be no profit in respect of those shares. The High. Court accepted the first two grounds relied on by the Tribunal. In addition it relied on the circumstance that under s. 18(5) of the Act, the assessee can get refund of tax only on the basis on which the parent company was taxed. The certificate granted by the High Court for appeal to, this Court was found to be invalid because it did not give any reasons. This Court however allowed the revenue to appeal by special leave. On behalf of the respondent assessee it was submitted that on a proper interpretation of the relevant provisions of the Income-tax Act, 1922 the scheme of the Act in the matter of levying tax on dividend income was that the Income-tax Officer should adopt a uniform method in assessing both the company declaring dividend as well as its shareholders who receive the dividend.

HELD : (i) It is well settled by the decision in Kantilal Manilal's case that dividend need not be distributed in money only. It may be distributed by delivery of property or right having monetary value., [623 B]

Kantilal Manilal and Ors. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad, 67 I.T.R. 315, applied.

Further the question whether a dividend has been lawfully distributed or not is also irrelevant in the matter of bringing the dividend declared to tax so long as the distributing company passes a resolution distributing dividends. In so doing the distributing company may act illegally and thereby incur penalties. But yet the amount so distributed as dividend is assessable in the, hands of receiver of the dividend in view of s. 16(2) which provides that for the purpose of inclusion in the total income of an

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assessee, any dividend shall be deemed to be income of the previous year in which it is paid. [623 C-D]

Kishnichand Chellaram and Ors. v. Commissioner of Income-tax, Bombay, 36 I.T.R. 640, relied on.

(ii)It is well known that the face value of shares need not be their real value at a given point of time. It would be wrong to say that when shares are distributed as dividend, the person who receives them gets only their face value in terms of money. What he really receives is the market value of those shares as on the date he 'became entitled to those shares. The value of the shares distributed does not depend on the valuation made by the distributing company. The income earned by an assessee has to be determined by the authorities under the Act and not by a third person. If it is otherwise several companies may distribute their dividend in kind and undervalue the goods distributed and thereby

facilitate evasion of tax by their share-holders. [623 G-624 B]

(iii)The question whether the shareholder retains those shares or sells them to others at profit or loss is irrelevant. An income does not cease to be an income merely because the person who receives it retains it in his hands. The fact that he receives it in kind does not make any difference in principle. The Tribunal went wrong in thinking that as the assessee company had retained those shares in its own hands those shares should be valued at their face value. [623 E-H]

(iv)The Tribunal and the High Court also went wrong in holding that it was not open to the authorities under the Act to value the shares differently in the hands of the assessee company when they had valued them at their face value in assessing the parent company. The assessee company could not insist that the error should also be carried to the assessment of the assessee company. No one gets any vested right in an erroneous order. [624 G-H]

(v)Because of erroneous valuation of the shares in the hands of the parent company, the assessee may conceivably get a lesser amount as refund under s. 18(5) but that circumstance could not alter the levy to be imposed on the assessee company. There is no provision in the Act which makes the assessment of income dependent on refund. The provisions relating to assessment are independent of refund through the provisions relating to refund may depend on assessment. [625 E-G]

The appeal must accordingly be allowed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2347 of 1968 and 1175 of 1971.

Appeals by certificate/special leave from the judgment and order dated November 15, 1967 of the Calcutta High Court in Income-tax Reference No. 155 of 1963.

S.T. Desai, B. B. Ahuja, R. N. Sachthey and B. D. Sharma, for the appellant (in both the appeals).

B.Sen, N. R. Khaitan, B. P. Maheshwari and Krishna Sen, for the respondent (in both the appeals).

The Judgment of the Court was delivered by Hegde, J. These appeals arise from the decision of the High. Court of Calcutta in a Reference under s. 66(1) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as the Act). That was a Reference made by the Income-tax Appellate Tribunal, 'A' bench, Calcutta. In that Reference after stating the case, the Tribunal referred the following question for obtaining the opinion of the High Court.

"Whether on the facts and in the circumstances of the case the Tribunal rightly excluded the sum of Rs. 61,656/- from being assessed as an extra dividend income of the assessee."

The High Court answered that question in the affirmative. Aggrieved by that decision, the Commissioner of West Bengal has brought Civil Appeal No. 2347 of 1968 on the strength of the certificate issued by the High Court under s. 66-A(2) of the Act. But the certificate given by the High Court is not supported by any reason. Hence the same cannot be held to be a valid certificate. Because of the invalidity of the certificate that appeal must be held to be not maintainable. In order to get over this difficulty, the, Commissioner moved this Court for special leave to appeal against the judgment of the High Court. Special Leave asked for was granted after condoning the delay in filing the appeal and the appeal arising therefrom was numbered as Civil Appeal No. 1175 of 1971.

The assessee is a company. Herein we are concerned with its assessment for the assessment year 1959-60, the relevant previous year ending on March 31, 1959. The assessee company was holding 458,071 shares In Pilani Investment Corporation Ltd. (which will hereinafter be referred to as the "parent company"). As per the resolution of the parent company declaring the dividends, the assessee company became entitled to receive on November 18, 1958 dividend amounting to Rs. 1,83,228/40 Np. That was at the rate of 40 N.P. per share. The amount of dividend receivable by the assessee company was paid to it partly in cash and partly in share scrips. It may be noted at this stage that the parent company is an investment company. The share scrips delivered to the assessee company were of M/s. Gwalior Rayon and Silk Manufacturing Co. Ltd. and Hind Cycles Ltd. The Income-tax Officer valued those shares as per their market value on the date on which those shares became the assets of the assessee company. The market value of those shares on that date was Rs. 2,44,526/-. He, therefore, added to the amount of dividend purported to have been declared, a sum of Rs. 61,500/- in computing the assessable income of the assessee ,company. Aggrieved by that order, the assessee company went ,up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the order of the Income-tax Officer and rejected the contention of the assessee company, that those shares should be valued as per their face value. Thereafter the assessee company took up the matter in second appeal to the Appellate Tribunal. The Tribunal allowed the assessee's appeal. It held that in order to bring any distribution within the category of dividend, it must be proved as a fact that what was distributed by the company was its accumulated profits. The Tribunal appears to have been of the view that the distribution of share scrips was not a distribution of profits. Hence their value cannot be considered as dividend. One other reason which persuaded the Tribunal to accept the appeal of the assessee company was that the share scrips received by the assessee company had been valued at their face value in the hands of the parent company 'for the purpose of assessment of its profits. The Tribunal thought that it was impermissible for the Income-tax Officer to value those shares in one manner in the hands of the parent company and in another manner in the hands of the assessee company. Yet another consideration that weighed with the, Tribunal was that the assessee company had not sold those shares. Therefore it made no profits in respect of those shares. So long as it retained those shares in its ,own hands, it cannot be said that it made any profits in respect of those shares as it cannot be said that it sold those shares to itself for a higher price. The High Court accepted the first two grounds relied on by the Tribunal. In addition it relied on the circumstance that under s. 18(5) of the Act, the assessee can get refund of tax only on the basis on which the parent company was taxed.

Before proceeding to examine the correctness of the conclu- sions reached by the Tribunal and the High Court, it is necessary to note at this stage that one other firm which was a shareholder of the parent company is Ujjain General Trading Society (P) Ltd. During the assessment year 1959-

60. the assessment year with which we are concerned in these appeals in accordance with the aforementioned resolution dated November 18, 1958, that Company had also been paid dividend by the parent company partly in cash and partly in shares of Gwalior Rayon and Silk Manufacturing Co. Ltd. and Hind Cycles Ltd. In the assessment of that firm also, the question arose whether it was open to the Income-tax Officer to value the shares distributed to that company at a price higher than its face value. The facts of this case and that, case are identical. Therein the Appellate Tribunal (a different Tribunal) held that it was permisible for the Income-

tax Officer to do so. In appeal the Madhya Pradesh High Court upheld the decision of the Tribunal-see Ujjain General Trading Society (P) Ltd. v. Commissioner of Income-tax, Delhi(1). Thus, on the same question of law two different High Courts have arrived at two different conclusions. It is now well settled by the decision of this Court in Kantilal Manilal and ors. v. Commisioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad(1) that dividend need not be distributed in money only. It may be distributed by delivery of property or right having monetary value. Further, the question whether a dividend has been lawfully distributed or not, in the matter of bringing the dividend declared to tax is also irrelevant so long as the distributing company passes a resolution distributing dividends. In so doing, the distributing company may act illegally and thereby incur penalties. But yet the amount so distributed as dividend is assessable in the hands of the receiver of the dividends in view of S. 16(2) which provides that for the purpose 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. This position is made clear by the decision of this Court in Kishinchand Chellaram and ors. v. Commissioner of Income-tax Bombay(3). Therefore the question whether dividend distributed by the parent company was out of the profits of that company or not is immaterial though in view of s. 205 of the Companies Act, 1956 and S. 2(6A) of the Act, only the profits earned in the year of assessment and the accumulated profits could have been distributed as dividends. All that we have to see is as to what is the income received by the assessee company in the shape of dividends. We have earlier seen that the income received by the assessee company need not be in the shape of cash only. It may also be some other property or right which has monetary value. Therefore when dividend is received in kind, in order to find out the true income received by an assessee, the property that has been received by him has to be valued on the basis of its market value. Otherwise it is not possible to compute the income received by him. It is well known that the face value of shares need not be their real value at a given point of time. The market price of particular shares may be very much more than their face value or very much less. It would be wrong to say that when shares a-re distributed as dividend, the person who receives them gets only their face value in terms of money. What he really receives is the market value of those shares as on the date he became entitled to those shares. The value of (1) 67 I.T.R. 315. (2) 41 T.T.R. 275.

(3)46 T.T.R. 640.

the shares distributed does not depend on the valuation made by the distributing company. The income earned by an assessee has to be determined by the authorities under the Act and not by a third person. If it is otherwise several companies may distribute their dividends in kind and under-value the goods distributed and thereby facilitate evasion of tax by their share holders. Acceptance of such a contention will be destructive of ,the very basis of taxation of dividends. The question whether the shareholder- retains those shares or sells them to others at profit or loss is irrelevant. An income does not cease to be an Income merely because the person who receives it retains it in his hands. The fact that he receives it in kind makes no difference in principle. What is brought to tax in the concerned assessment year is theincome received by the assessee and not the profits earned by himby dealing with that income. In our opinion, the Tribunal went wrong in thinking that as the assessee company had retained those shares in its own hands those shares should be valued at their face value. At this juncture, it is necessary to mention that in some previous years also the parent company had distributed a portion of its share holding as dividend to its share holders. It appears, in those years the market value of those shares was less than their face value and the parent company valued those shares for the purpose of its income tax on the basis of market value and not according to their face value. The parent company appears to believe in the saying "Heads I win tails you loose". But that is only by the way. The only question that we have to decide is what is the income received by the assessee company during the assessment year in question-the income in the real sense. On this question there can be no two answers and the only answer is that the income received by it is the cash amount received plus the value of the shares received-the real value of the shares as on the date the asesssee company became entitled to it.

Both the Tribunal and the High Court have attached con- siderable importance to the fact that while assessing the parent company, the assessing authority had valued those shares at their face value. That being so, they have opined that it was not open to the authorities under the Act to value those shares differently in the bands of the assessee company. Here again we are unable to appreciate their reasoning. Ile fact that the Department incorrectly valued those shares in the hands of the parent company does not confer a right on the assessee company to insist that the error should also be carried to the assessment of the assessee company. No one gets a vested right in an erroneous order. Because of erroneous valuation of the shares in the hands of the parent company, the assessee may conceivably get a lesser amount as refund under s. 18(5) but that circumstance cannot alter the levy to be imposed on the assessee company. Mr. B. Sen, learned Counsel for the assessee company, tried to give a different shape to the case in the course of his argument. He, in our opinion , rightly did not base his arguments on thegrounds relied on by the Tribunal and the High Court. On theo ther hand, he contended that on a proper interpretation of therelevant provisions of the Act, it would be seen that the schemeof the Act, in the matter of levying tax on dividend income is that the Income- tax Officer should adopt a uniform method in assessing both the company declaring dividends as well as its shareholders who receive the dividend. In support of this theory of his he relied on ss. 12(1-A), 16(2), 18(5), 20 and 35 (9) of the Act. Dividend is treated as income in view of S. 12(1-A). Net dividend received by the shareholder is grossed up for inclusion in the total income of the assessee under s. 16(2). Section 18(5) provides for refund of the tax paid on the dividend income by the company which has distributed dividend. Section 20 provides for the issuance of a certificate showing the gross dividend, tax payable on that dividend and the net dividend. Section 35(9) empowers the Income-tax Officer to recover from the person who receives dividend the tax in

respect of the same, payable by the company which distributed the dividend but in fact not paid by that company within the prescribed time. On the basis of these provisions, he urged that if the dividend paid in kind is valued in one manner in the hands of the company which distributed it and in a different manner in the hands of the person who received it, then the assessee will not be able to get the refund to which he would have been entitled to had that property been valued properly in the hands of the distributing company. Therefore, he urged that we must spell out the scheme put forward by him. Ingenious, though the argument is, it rests on no foundation. There is no provision in the Act which makes the assessment of income dependent on refund. The provisions relating to assessment are independent of refund though the provisions relating to refund may depend on assessment. Equitable considerations are not relevant in interpreting the provisions of a taxing statute, apart from the fact the equity pleaded in this case is remote possibility. None of the provisions relied on by Mr. Sen afford any basis for the scheme sought to be established by him.

In our opinion the High Court erred in answering the question referred to it in the affirmative and in favour of the assessee. For the reasons' mentioned above we discharge that answer and answer that question in the negative and in favour of the Department.

L 3Sup.C.T./-/2 costs. Civil Appeal No. 2347 of 1968 is dismissed as being not maintainable but without any order as to costs. G.C, C.A. No. 1175 of 1971 allowed.

C.A. No. 2347 of 1968 dismissed.