

Madhya Pradesh Financial Corporation Vs. Commissioner of Income-tax

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Court : Madhya Pradesh

Decided On : Sep-08-1980

Reported in : [1981]132ITR884(MP)

Judge : G.G. Sohani and ;K.N. Shukla, JJ.

Acts : [State Financial Corporations Act, 1951](#) - Sections 3 and 43; [Income Tax Act, 1961](#) - Sections 154; [Finance Act, 1964](#)

Appeal No. : Miscellaneous Civil Case No. 360 of 1976

Appellant : Madhya Pradesh Financial Corporation

Respondent : Commissioner of Income-tax

Advocate for Def. : S.C. Bagadiya, Adv.

Advocate for Pet/Ap. : A.K. Chitale, Adv.

Judgement :

Sohani, J.

1. By this reference under Section 256(1) of the I.T. Act, 1961, the Income-tax Appellate Tribunal, Indore Bench, has referred the following questions of law to this court for its opinion :

' (1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the dividend tax at the rate of 71/2% had rightly been levied on the entire amount of dividend of Rs. 3,50,000 paid by the assessee in each of the two assessment years 1964-65 and 1965-66, which were partly distributed out of the profits earned by the assessee and partly from the subvention amounts paid by the Madhya Pradesh State Government to the assessee in each of the years concerned

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Section 154 of the Income-tax Act, 1961, were rightly applied to the case of the assessee in the assessment year 1964-65

(3) Whether the Tribunal was right in holding that the sum of Rs. 9,000, being the profits on the redemption of the loan bonds of the assessee, was liable to be taxed as a capital gain '

2. The material facts giving rise to this reference briefly are as follows : The assessee is a Corporation established by the State Govt. under Section 3 of the [State Financial](#)

[Corporations Act, 1951](#). The assessment years in question are 1964-65, 1965-66, 1969-70 and 1970-71. The assessee had distributed dividend amounting to Rs. 3,50,000 in the assessment years 1964-65 and 1965-66. These amounts included the sums of Rs. 2,02,000 and Rs. 2,23,000, being the amounts of subvention by the State Govt. While framing the assessment for the year 1964-65, the ITO did not hold the amount of dividend distributed by the assessee chargeable to tax. The ITO, however, rectified his assessment order for the year 1964-65, under Section 154 of the I.T. Act, 1961, on the ground that he had committed a mistake in not holding that the amount of dividends distributed by the assessee was chargeable to tax. The same view was held by the ITO while framing the assessments for the other assessment years. On appeal, the order of the ITO was affirmed. In the second appeal preferred by the assessee before the Tribunal, it was contended that the amount of dividend paid by the assessee was not chargeable to any tax. It was also contended that so far as the amount of subvention was concerned, it could not be subjected to any tax. The Tribunal negated these contentions and upheld the order passed by the ITO. As regards the rectification of the original assessment order for the assessment year 1964-65, the Tribunal observed that the ITO was justified, in the circumstances of the case, in exercising his powers under Section 154 of the I.T. Act, 1961.

3. The assessee had also invested a sum of Rs.11,91,000 in the Madhya Pradesh State Development Loans. These bonds were purchased by the assessee at the discount price of Rs. 99'25 per bond. These bonds were encashed at the face value of Rs. 100 on the date of maturity, which fell in the accounting year relevant to the assessment year 1969-70. The Corporation thus received a sum of Rs. 12,00,000 on surrendering the bonds. The excess amount of Rs. 9,000 so realised by the Corporation was taxed by the ITO as business income of the assessee. The AAC, on appeal, held that the sum of Rs. 9,000 was a capital gain. In the second appeal preferred by the assessee before the Tribunal, the assessee did not dispute that the bonds in question were the capital assets of the assessee-Corporation. It was, however, contended that the transaction of surrender of the bonds did not amount to a relinquishment of any assets and hence the excess amount received by the assessee was not liable to be taxed as a capital gain. The Tribunal negated that contention. Aggrieved by the order passed by the Tribunal, the assessee submitted three applications for making a reference to this court. That is how, at the instance of the assessee, the aforesaid questions of law have been referred to this court for its opinion.

4. Now, so far as the first question is concerned, the Tribunal has assumed that the dividend paid by the Corporation was chargeable to tax. We do not find any reference to any provision of law in the order of the Tribunal to justify this assumption. Learned counsel for the department brought to our notice the provisions of the [Finance Act, 1964](#), which prescribe the rate of tax. There is, however, no provision in the [Finance Act, 1964](#), providing for the levying of tax on the dividend distributed by a company. Under the provisions of Section 43 of the [State Financial Corporations Act, 1951](#), for the purpose of income-tax, the assessee is to be treated as a company. There is thus no provision of law referred to by the Tribunal, nor was any such provision brought to our notice, to show that dividend paid by the assessee was chargeable to tax. In our opinion, therefore, the Tribunal was not justified in holding that the dividend tax had rightly been levied, on the amount of dividend paid by the assessee, for the assessment years 1964-65 and 1965-66. In this view of the matter, the question as to whether the amount of subvention by the State Govt. to the assessee in these assessment years for the payment of dividend should or should not have been held chargeable to tax does not arise for consideration. Our answer to the first question

referred to us, therefore, is that the Tribunal was not justified in holding that the dividend tax had rightly been levied, on the amount of dividend paid by the assessee, for the assessment years 1964-65 and 1965-66.

5. As regards the second question, learned counsel for the parties conceded that, in view of our answer to the first question, the second question does not arise and, hence, it was not necessary to answer the second question. We, therefore, decline to answer that question.

6. As regards the third question, it was not disputed before the Tribunal on behalf of the assessee that the bonds in question, which, on surrender, resulted in a gain of Rs. 9,000 to the assessee, were capital assets of the assessee. The Tribunal has, accordingly, found that the bonds in question were the capital assets of the assessee. In view of this finding, the profit earned by the assessee on the surrender of the bonds was rightly held by the Tribunal as liable to be taxed as capital gains. Our answer to the third question is, therefore, in the affirmative and against the assessee.

7. The reference is answered accordingly. Parties shall bear their own costs in this reference.

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