Commissioner of Income-tax, Delhi (Central)-i Vs. Bharat Nidhi Ltd.

LegalCrystal Citation : legalcrystal.com/681461

Court : Delhi

Decided On : Sep-30-1983

Reported in : [1984]149ITR245(Delhi)

Judge : Prakash Narain, C.J. and; S.S. Chadha, J.

Acts : Finance Act, 1959

Appeal No. : Income-tax References Nos. 114, 115, 138, 139 and 209 of 1972

Appellant : Commissioner of Income-tax, Delhi (Central)-i

Respondent : Bharat Nidhi Ltd.

Judgement :

Prakash Narain, C.J.

1. These reference made by the Income-tax Appellate Tribunal, Delhi Bench 'A', have been heard together as identical question of law have been referred to the High Court for its opinion. The assessment in respect of which these references arise are 1959-60, 1960-61 and 1961-62 the relevant accounting years being the calendar years 1958, 1959 and 1960. Form the Tribunal's judgment for each of the assessment years, both the Commissioner and the assessed applied for reference being made to the High Court. thereforee, for each of three assessment years, common references have been made for such questions of law as the Tribunal thought should be referred on the applications moved by the Commissioner and the assessed. The law applicable for each of the three assessment years was the Indian I.T. Act, 1922.

2. The questions referred to the High Court in I.T. Rs. Nos. 114 and 115 of 1972 (assessment year 1959-60) are as under :

'1. Whether, on the facts and in the circumstances of the case, a sum of Rs. 2,19,380 representing the difference between the market value and the cost of acquisition of the shares of the New Central Jute Mills Co. Ltd. is liable to be assessed in the hands of the company as revenue profit

2. Whether, on the facts and in the circumstances of the case, the amount of dividends distributed by the company during the previous year within the terms of clause (c) of the second proviso to Paragraph 'D' of the First Schedule to the Finance Act of 1959 is the sum of Rs. 9,84,391 as held by the authorities or Rs. 7,38,832 as contended for by the assessed ?'

3. Similarly, the questions referred to the High Court in I.T.Rs. Nos. 138 and 139 of

1972 (assessment year 1960-61), are as under :

'1. Whether, on the facts and in the circumstances of the case, the assessed is liable to tax in respect of the sum of Rs. 5,95,486 on the ground that it had realised an assessable business profit by the distribution of the dividends in specie

2. Whether, on the facts are in the circumstances of the case, the assessed is entitled to the deduction in the computation of its business income of the sum of Rs. 8,980 ?'

4. The questions referred to the High Court in I.T.R. No. 209 of 1972 are as under :

'1. Whether, on the facts and in the circumstances of the case, a sum of Rs. 37,689 is assessable as the business profits of the assessed-company for the assessment year 1961-62

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in excluding the sum of Rs. 19,86,002,from the assessment ?'

5. Briefly stated, the facts, so far as they are relevant, are these. The assessed was formerly known as Bharat Bank Ltd. it held a number of shares in various companies and these shares thus held were 1,24,000 ordinary shares of the New Central Jute Mills Co. Ltd., 12,455 ordinary shares of the Punjab National Bank Ltd. and another lot of 73'900 ordinary shares of the Punjab National Bank Ltd., relevant to the assessment years 1959-60, 1960-61 and 1961-62. By resolutions passed on October 31, 1958, September 23,1959, and September 28, 1960, the assessed declared dividend on its ordinary shares in specie in the shape of shares of the three respective companies being distributed by way of dividend to its shareholders. Thus the dividend declared for each of these years was distributed in specie in regard to which the dispute has arisen and references have been made. We are not concerned with any dividend declared or distributed in cash.

6. The ITO, for each of the three years, held that inasmuch as shares held by the assessed by way of stock-in-trade were distributed as dividend, the difference between the market value of those shares and the price at which the assessed had acquired the same was taxable in the hands of the assessed as profit inasmuch as the assessed was a dealer in shares. The AAC agreed with this view but in computation of the difference in the price of acquisition and distribution of the shares by the assessed, his opinion was somewhat different. The Tribunal took the view that when dividend is declared in specie, there was no question of profit.

7. Reliance has been placed by learned counsel for the Revenue on several decisions, viz., CIT v. Meenakshi Mills Ltd. : [1967]63ITR609(SC) , Dooars Tea Co. Ltd. v. Commr. Agrl. I.T. : [1962]44ITR6(SC) , Sharkey v. Wernher [1956] 29 ITR 962 , R. B. Lachman Das Mohanlal & Sons v. CIT : [1964]54ITR315(All) , CIT v. Central India Industries Ltd. : [1971]82ITR555(SC) , Kantilal Manilal v. CIT : [1961]41ITR275(SC) , Juggilal Kamlapat v. CIT [1969] ITR 73 and CIT v. Dalmia Investment Co. Ltd. : [1964]52ITR567(SC) . In our opinion, non of these decisions, except Kantilal Manilal v. CIT : [1961]41ITR275(SC) , has any relevance at all to the issue before us. We may, thereforee, only notice this decision on which strong reliance has been placed.

8. The Bank of India had passed a resolution for increasing its share capital. It offered new shares of Rs. 50 each to its existing shareholders in the proportion of one new

share for every three shares held by them at a premium of Rs. 50. The Navjivan Mills Ltd. held 5,000 shares in the said bank and thus became entitled to 1,666 new shares. The Navjivan Mills' Ltd. purchased 66 shares and pursuant to a resolution by its board of directors distributed the right to purchase the remaining 1,600 shares among shareholders in the proportion of two shares of bank for each share held by them in the mills. The assessed, who held 570 shares in the mills and thus became entitled to purchase 1,140 new shares of the bank, agreed to the allotment of those shares and ultimately transferred them to a private company. In these circumstances, the assessed was held liable to be taxed on the value of the right transferred by the assessed. The question on which the answer was given in favor of the Revenue was framed as under :

'Whether, on the facts and in the circumstances of the case, the distribution of the right to apply for the shares of the Bank of India by Navjivan Mills Ltd., in favor of the assesseds, amounted to a distribution of 'dividend' ?'.

9. The question before the Supreme Court on appeal by the assessed was as to what was the meaning of the terms 'dividend' as postulated by s. 2(6A) of the Act of 1922. Their Lordships held that it was open to Navjivan Mills Ltd. to sell the right to the shares of the Bank of India in the market and to distribution the proceeds among the shareholders. Such a distribution would, undoubtedly, have been distribution of dividend. If instead of selling the right in the market and then distributing the proceeds, the mill directly transferred the right, the benefit in the hands of the shareholders was still dividend. Their Lordships further held that dividend need not be distributed only in money. It could be distributed by delivery of property or right having monetary value.

10. In our opinion, the above decision does not help the Revenue at all. The Supreme Court was only concerned with construing s. 2(6A) of the Act. It held that dividend may be distributed in cash or in specie distributed by way of dividend qua the company declaring the dividend. Distribution of dividend in specie, in our opinion, cannot be regarded as a trading activity, even where what is distributed is stock-in-trade of the assessed. As to what will be the value of the right in the hands of the share-holders is wholly irrelevant for purposes of assessment of profit and loss of the company distributing the asset. We are, thereforee, of the view that the Tribunal was right in coming to the conclusion that there was no question of profit and loss as far as the assessed is concerned when it distributed shares held by it of other companies by way of dividend. In answering the question referred to us, we have to examine the contentions from the point of view of the assessed-company and not the value of the asset in the hands of the shareholders.

11. thereforee, the answer to the first question in the references for all the three assessment years is in the negative, in favor of the assessed and against the Revenue.

12. In I.T.Rs Nos. 138 and 139 of 1972, question No. 2 has been framed at the instance of the assessed. Learned counsel has not pressed for opinion on these questions and, thereforee, the same are not being answered in these references.

13. With regard to the second question in I.T. Rs. Nos. 114 and 115 of 1972, it relates to the withdrawal of the corporation tax rebate due to the assessed for the purpose of levying super-tax. The contention of the assessed is that the amount of dividend should be taken to be what is actually distributed in cash plus the face value of the

shares distributed by it as dividend in specie. Super-tax, is to be computed on profit or loss. We have already held that in distributing dividend in specie, there is neither profit not loss. There is no trading activity. If that be correct position, for purposes of rebate, it would be futile to add the market value of the shares distributed as dividend or its average value. The Tribunal, thereforee, was wrong in taking assistance of the decision in Kantilal Manilal : [1961]41ITR275(SC) , referred to earlier, to hold that the rebate is to worked out on the basis on the market value of the shares distributed by way of dividend. As we noticed earlier, the Supreme Court was really concerned with laying down what was the meaning of the term 'dividend' and whether it could be distributed in specie. It was further concerned with the value of the shares in the hands of the company declaring the dividend. In this view of the matter in answering question No. 2 in L.T.Rs. Nos. 114 and 115 of 1972, we have to uphold the contention of the assessed as against the Revenue.

14. In I.T.R. No. 209 of 1972, the answer to question No. 2 is dependent entirely on the view we have expressed in I.T.R.No. 114 of 1972. We, thereforee, answer question No. 1 in the affirmative, in favor of the assessed and against the Revenue.

15. There will be no order as to costs.