
(1994) 01 MAD CK 0028

In the Madras High Court

Case No : Tax Cases No"s. 143 and 144 of 1979 (Reference No"s. 93 and 94 of 1979)

A.F.W. Low

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-01-1994

Acts Referred:

Income Tax Act, 1961 — Section 18(5), 5(1), 90, 91, 91(1)

Citation : (1995) 124 CTR 298 : (1995) 217 ITR 213

Hon'ble Judges : V. Ratnam, J; Bhakthavatsalam, J

Bench : Division Bench

Advocate : Ramamani, for the Appellant; Mrs. Nalini Chidambaram, for the Respondent

Judgement

Ratnam J.

1. The assessee, an individual and resident, during the assessment years 1970-71 and 1971-72, received dividend income from certain companies

incorporated in the united Kingdom. In the original assessments, the actual amounts received by the assessee from the companies converted at the

proper exchange rate into rupees were included. Later, the Income Tax Officer realised that what was included in the assessment was the net

dividend income received by the assessee after deduction of Income Tax and, as, according to hi, the gross dividend was includible u/s 5(1)(c) of

the Income Tax Act, 1961 (hereinafter referred to as "the Act"), especially in view of the amendment brought about by the Finance Act, 1965, to

the united Kingdom Income Tax Act, 1952, under which U. K. companies deducted tax on dividends and paid the amounts deducted to the

Inland Revenue as an amount, apart from its own tax liability. Reassessments

were made including the gross dividend income of Rs. 56,682 and Rs. 59,076, respectively, received by the assessee, instead of Rs. 33,610 for each year. On appeal, the appellate Assistant Commissioner took the view that as there was no provision in the Act authorising the gross dividend income received being assessed to Income Tax, the assessments made could not be sustained. On further appeal by the Revenue before the Tribunal, it took the view that the payment of tax on the gross dividend income was by deduction at source and in such a case, only the gross amount constituted the assessee's income and not the net dividend after deduction of tax, and the granting of relief of double Income Tax to the assessee also established that the gross dividend income alone should be regarded as having accrued or arisen to the assessee outside India during the assessment years u/s 5(1)(c) of the Act. In that view, the Tribunal upheld the reassessment orders including the gross dividends received by the assessee during the assessment years in question. u/s 256(1) of the Act, at the instance of the assessee, the following common question of law has been referred to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the sums of Rs. 56,682 and Rs. 59,076 being gross dividends are liable to be included as foreign dividend income in the computation of income for the assessment years 1970-71 and 1971-72?

2. Learned counsel for the assessee strenuously contended that the assessee had received during the assessment years in question only the net dividend from the companies in the United Kingdom and at best even u/s 5(1)(c) of the Act, only the net dividend income could be regarded as having accrued or arisen to the assessee outside India during the assessment years in question. Strong reliance in this connection was placed upon the decision in *Commissioner of Income Tax (Central) Vs. Oriental Co. Ltd.*, . On the other hand, learned counsel for the Revenue submitted that whatever might have been the position earlier, with reference to the payment of tax by the companies under the provisions of the U. K. Income Tax Act, by reason of the amendment brought about by the Finance Act of 1965, to the U. K. Income Tax Act, 1952, the United Kingdom companies deducted tax from dividend and paid the same to the Inland Revenue and tax so deducted was nothing but the income of the assessee

and what had accrued or arisen to the assessee was thus not only the net dividend income received, but also the tax that was deducted. In other

words, according to counsel for the Revenue, the assessee had received not only the net dividend, but also the gross dividend inclusive of the tax

deducted at source. Reference in this connection was also made to the decision of the Supreme Court in *Commissioner of Income Tax, West*

Bengal Vs. Clive Insurance Co. Ltd., and also to Circular No. 369 dated September 17, 1983 (see [1984] 145 ITR 9). In relation to the changes

brought about in the provisions of the U. K. Income Tax Act, 1952, by the Finance Act, 1965, reference was made to Simon's Taxes, third

edition, Volume D, Part DI.1. pages 101 and 102.

3. Prior to the U. K. Finance Act, 1965, amounts deducted by way of tax from the dividends distributed at the standard rates were allowed to be

retained by the companies, but after 1965, the amounts had to be paid over to the Inland Revenue. Under the U. K. Income Tax Act, there does

not appear to be a provision to the effect that amounts deducted from the dividend income of a member constituted payment of Income Tax by the

member. It is also necessary to remember that provision is made in the Act u/s 91(1), corresponding to section 49D of the Indian Income Tax Act,

1922, to make available to the assessee double Income Tax relief, subject to the fulfilment of the requirement in that regard.

4. We are of the view that, having regard to the provision u/s 91 of the Act, providing for double Income Tax relief, the gross dividend alone

should be regarded as having accrued or arisen or even received by the assessee. We are also fortified in this view by the decision of the Supreme

Court in *Commissioner of Income Tax, West Bengal Vs. Clive Insurance Co. Ltd.*, . Therein, a company resident in India held shares in certain

United Kingdom based companies and by virtue of the exercise of option under the provisions of the U. K. Income Tax Act, 1952, to reimburse

themselves the tax paid by them, the United Kingdom companies deducted Income Tax from the gross dividend paid to the shareholders and the

assessee during the relevant assessment year received a net dividend income of Rs. 15,266 after deduction of Rs. 9,881 at the standard rate. The

petitioner claimed double taxation relief u/s 49D of the Indian Income Tax Act, 1922, on the ground that the assessee had paid the amount

deducted from the gross dividend in the United Kingdom as Income Tax by deduction. There was then no reciprocal arrangement for relief or avoidance of double taxation and the relief prayed for by the assessee was negated by the authorities, but upheld by the Tribunal and the High Court on reference. The Supreme Court pointed out that according to the law of the United Kingdom, dividends which had borne tax in the hands of the paying company were treated as franked income in the hands of the shareholder and that meant the income in the form of dividend had been subjected to tax and it was immaterial whether it was taxed in the hand of the shareholder or not, but they were deemed to be taxed in the hands of the shareholder in the United Kingdom. The Supreme Court also held that the dividend represents franked income distributed out of profits and gains and not liable to further Income Tax in the hands of the member and it clearly transpires that for purposes of relief against double taxation, it is income which has been subjected to tax in a foreign country in which it has arisen and irrespective of the fact that there is no provision comparable to section 18(5) of the Act, yet the payment of tax by the company operates as a relief to the shareholder and on that account alone the dividend income is not chargeable to tax in the United Kingdom. Ultimately, the Supreme Court stated that with reasonable certainty, it can be said that in respect of the dividend income of the assessee, Income Tax has been paid by deduction or otherwise under the law in force in the country in which income had arisen. It may also be noticed that unless the gross amount was the income of the assessee, the question of payment of tax thereon by deduction at source by the assessee may not arise. We are, therefore, of the view that though the decision of the Supreme Court referred to above dealt with a case of the availability of relief u/s 49D of the Indian Income Tax Act, 1922, yet the considerations adverted to therein with reference to the nature of the deduction and with reference to the character of the tax deducted at source being eligible for double taxation relief, would be applicable here as well. Unless it be that the gross dividend is the income of the assessee and tax thereunder is deducted at source in the United Kingdom and the net dividend is made available, there is no question of an assessee taking advantage of the provision relating to double taxation relief. In other words, income had already been assessed under the provisions of the U. K. Income Tax Act, and with

reference to the same income which had already been subjected to tax elsewhere, there cannot be payment of tax again.

5. We may now make a reference to the decision strongly relied on by learned counsel for the assessee in Commissioner of Income Tax (Central)

Vs. Oriental Co. Ltd., . That proceeds on the footing that the deduction of tax at source in the United kingdom constitutes diversion of that portion

by a statute even at the stage of declaration and it will not, therefore, be a case of application of income after accrual, but income never accrued in

the sense of a debt owing by the company to the assessee and, therefore, only the dividend income, after deducting tax at source in United

Kingdom should be included in the assessee's total income. With respect, we are unable to subscribe to the view so stated, for, though the

decision in Commissioner of Income Tax, West Bengal Vs. Clive Insurance Co. Ltd., had been referred to, the full import of that decision had not

been given effect to. Further, the anomalous position which may result has also been noticed, in that, an Indian shareholder receiving dividend

income would be liable to pay tax on the gross income without any relief, except that he gets credit to the extend of the tax deducted at source.

While an Indian shareholder owing foreign shares would be taxed only on the net dividend income an he would get double taxation relief, that is to

say, the relief on the basis that the tax had been deducted at source. Indeed, the decision also suggested the interference of the Legislature.

However, when a construction is possible which does not lead to an anomaly, we are of the view that that construction should be adopted in

preference to the one which leads to an anomaly. We are, therefore, unable to accept and apply the principles laid down in the decision in

Commissioner of Income Tax (Central) Vs. Oriental Co. Ltd., . In this view, it is unnecessary to go into the contents of the circular though the

circular also reinforces the stand taken by the Revenue, in the light of the decision of the Supreme Court in Commissioner of Income Tax, West

Bengal Vs. Clive Insurance Co. Ltd., referred to above.

6. For the foregoing reasons, the question referred to us is answered in the affirmative and against the assessee. There will be, however, no order

as to costs.