

**(1973) 09 AHC CK 0014**

**In the Allahabad High Court**

**Case No :** Income-tax Reference No's. 705, 706, 707, 708, 709, 710 and 711 of 1970

Commissioner of Income Tax

APPELLANT

Vs

Anand Kumar Bindal

RESPONDENT

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**Date of Decision :** 19-09-1973

**Acts Referred:**

Companies Act, 1956 — Section 108  
Income Tax Act, 1961 — Section 199  
Income Tax Rules, 1962 — Rule 30A

**Citation :** (1974) 96 ITR 44

**Hon'ble Judges :** R.L. Gulati, J;C.S.P. Singh, J

**Bench :** Division Bench

**Advocate :** R.R. Misra, for the Appellant; Shanti Bhushan and V.K. Khanna, for the Respondent

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## **Judgement**

Gulati, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), at the instance of the Commissioner of Income Tax, U. P., Kanpur.

2. The statement of the case relates to the assessment years 1963-64, 1964-65 and 1965-66 with the relevant previous years ending on March 31 of 1963, 1964 and 1965, respectively. The assessee is a member of the Hindu undivided family of which Seth Sheo Prasad was the karta. The family owned certain shares of Lord Krishna Sugar Mills Ltd. (hereinafter referred to as "the company"). The shares were registered in the name of the karta. By a deed dated July 28, 1962, a partial partition was carried out in the family and shares of the company were divided amongst the various members. By letter dated August 6, 1962, the assessee applied to the company for the transfer in his name of the shares allotted to him. As the shares were under attachment in recovery of certain Income Tax dues, the transfer was not immediately effected. The shares were actually transferred in the name of the assessee on July 2, 1965, after they were released from attachment and after taking from the assessee the necessary

indemnity. In the meantime, the company declared and paid dividend on the shares allotted to the assessee. Although in the relevant years the shares did not stand in the name of the assessee, yet the dividend was assessed in his hands as he was the beneficial owner thereof. However, no credit was allowed to him of the tax deducted at source by the company. The assessee appealed and the Appellate Assistant Commissioner of Income Tax, relying on the decision of the Supreme Court, in the case of *Kishanchand Lunidasingh Bajaj Vs. Commissioner of Income Tax, Mysore*, held that the gross amount of dividend in respect of the three years in question should have been assessed as income from other sources without any credit being given of the tax deducted at source and that the Income Tax Officer had wrongly included the net amount of dividend in the assessments. He accordingly enhanced the income from this source by Rs. 3,850, Rs. 1,148 and Rs. 1,405 for the three assessment years respectively, without allowing any credit for the tax deducted at source. The assessee then appealed to the Income Tax Appellate Tribunal. The Tribunal allowed the assessee's appeal. It held that the assessee was entitled to the benefit of tax deducted at source. The Commissioner is aggrieved and at his instance the Income Tax Appellate Tribunal has referred the following question for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to get benefit of tax deducted at source from dividends of Lord Krishna Sugar Mills Ltd. ? "

3. Now the assessee during the relevant years was not a shareholder of the company for purposes of the Companies Act inasmuch as the shares had not been transferred in his name. He was a beneficial owner, the shares having been allotted to him on partition. Under the Indian Income Tax Act, 1922, the tax deducted at source from dividend could only be allowed to a registered shareholder and not to a beneficial owner thereof, even though such dividends were assessable in the latter's hands : See *Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta.*, and *Income Tax Officer, North Satara Vs. Arvind N. Mafatlal and Others*, . But the position is materially different under the Income Tax Act, 1961, which governs the present case. Under Sections 192 to 194 of this Act, every company is required to deduct tax at appropriate rate from the dividend paid to its shareholders. Section 199 provides for credit of such tax deducted at source. Provision is also made for allowing credit of the tax deducted at source to a person other than the registered shareholder where the income from dividend is assessable in the hands of such other person. The material portion of Section 199 reads :

" 199. Any deduction made in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195 and paid to the Central Government shall be treated as a payment of 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 for the amount so deducted on the production of the certificate furnished u/s 203 in the assessment) including a

provisional assessment u/s 141A), if any, made for the immediately following assessment year under this Act :

Provided that--...

(ii) in any other case, where the dividend on any share is assessable as the income of a person other than the shareholder, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, such other person in such circumstances as may be prescribed :....."

4. Rule 30A has been added to the rules framed under the Income Tax Act. This rule so far as material for our purposes runs:

" 30A. Credit for tax deducted at source to a person other than the shareholder in certain circumstances.--(1) Subject to the provisions of Sub-rule (2), where the dividend on any share is assessable as the income of a person other than the shareholder, any deduction made in accordance with Section 194 and paid to the Central Government, shall be deemed to be a payment of tax on behalf of, and the credit in respect thereof shall be given to, such other person in the circumstances specified below, namely :--....."

(ix) Where the shares have been sold or otherwise transferred by the registered shareholder and action for registering the transfer in the name of the purchaser or other person has been taken in accordance with the provisions of Section 108 of the Companies Act, 1956 (1 of 1956)....."

5. A reading of these provisions makes it clear that a beneficial owner of shares of a joint stock company, even though not a registered shareholder, is entitled to the credit for tax deducted at source out of dividends paid on such shares where the shares have been sold or otherwise transferred to him by the registered shareholder and action for registering the transfer of shares in his name is taken in accordance with Section 108 of the Companies Act, 1956. According to the admitted case of the parties the case of the assessee is governed by Clause (ix) of Rule 30A(1), as quoted above. All that has to be seen, therefore, is as to whether action had been taken for the transfer of the shares in the assessee's name, as required by Section 108 of the Companies Act, 1956. That section provides that "a company shall not register a transfer of shares in the company unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares....."

6. Mr. R. R. Misra, the learned counsel for the Commissioner of Income Tax, argues that the assessee had not complied with Section 108 of the Companies Act and hence he was not entitled to the credit for the tax deducted at source. His contention is that the shares should have been transferred in the name of the

assessee in the relevant previous year or at any rate action should have been taken for the transfer of the shares to his name in accordance with Section 108 of the Companies Act within the relevant previous year and this not having been done, the assessee was not entitled to the benefit of the tax deducted at source. We find no merit whatsoever in this contention. Neither Section 199 nor Rule 30A requires that the shares should be transferred in the name of the transferee within the previous years nor indeed it is necessary that action for such transfer should be taken within the previous year. All that is required to be done is that in cases where shares have been sold or otherwise transferred steps should be taken in accordance with Section 108 of the Companies Act for the transfer of the shares to the transferee's name. This can be done at any time before the assessment takes place. At any rate, so far as the present case is concerned, the assessee did apply to the company for the transfer of the shares on 6th August, 1962, within the previous year for the assessment year 1963-64. This is clear from a letter of the company dated September, 11, 1969, a copy of which has been made part of the statement of the case as annexure " D ". This is what is stated in that letter :

" This is to confirm that by letter dated 6-8-1962 Seth Anand Kumar intimated to the company of the shares standing registered in the name of Seth Shiv Prasad having been partitioned amongst the family members of Seth Shiv Prasad and 3,229 ordinary and 900 deferred shares coming to him, necessary steps may be taken in this respect."

7. The letter further goes on to say that as the Collector of Saharanpur had earlier attached the shares registered in the name of Seth Shiv Prasad for recovery of Income Tax dues, no transfer could be effected by the company. The shares were ultimately transferred only after they were released from attachment by the Income Tax department and even then after obtaining an indemnity bond from the assessee. It is clear that the delay in transfer was not for want of necessary steps but because of the attachment of the shares by the Income Tax department. The next contention that a duly stamped and executed instrument of transfer signed by the transferor and by or on behalf of the transferee, as required by Section 108 of the Companies Act, had not been filed, also cannot be accepted in view of the finding of the Tribunal that no such objection was raised by the Income Tax department before it. This is clear from the following observations of the Tribunal :

" Besides there has been no suggestion from the revenue that the transferor, the Hindu undivided family, and the transferee, the assessee, did not combine in the execution of the transfer of shares in the proper form ? "

8. The learned counsel says that this observation of the Tribunal is not factually correct. This observation does appear to be at variance with what the Tribunal has stated in paragraph 6 of its appellate order. There the Tribunal has noticed the contentions raised on behalf of the department that there had been no proper instrument of transfer duly stamped and executed by or on behalf of the

Hindu undivided family and by or on behalf of the assessee. We, however, have to go by the facts as found by the Tribunal and not by the contentions raised before it. The finding recorded by the Tribunal is a finding of fact and it cannot be ignored unless a separate question is referred to the High Court questioning the finding of fact for want of evidence or on the ground that it was perverse. See *The Guru Estate through Dwarkadas Guru and Others Vs. The Commissioner of Income Tax Bihar and Orissa*, . Obviously, the department never raised any such question and no such question has been referred to us. As such, we must accept the finding of the Tribunal that the transferor and the transferee did combine in the execution of an instrument of transfer in the proper form. Moreover, we find that the company did ultimately transfer the shares in the assessee's name and it can be safely presumed that the requirement of Section 108 of the Companies Act must have been complied with.

9. We accordingly answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to the costs, which we assess at Rs. 200.

10. The connected cases relate to the other members of the family who had been allotted shares on partition. The question of law and the facts are common. Hence this judgment will govern the connected references also.