
(1967) 03 AP CK 0006

In the Andhra Pradesh High Court

Case No : Case Referred No's. 2 of 1961 and 62 of 1964

Commissioner of Income Tax

APPELLANT

Vs

C.P. Sarathy Mudaliar

RESPONDENT

Date of Decision : 28-03-1967

Acts Referred:

Income Tax Act, 1922 — Section 2(6A)

Citation : (1968) 68 ITR 626

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Krishna Rao, J

Bench : Division Bench

Advocate : C. Kondaiah, for the Appellant; K. Ranganathachary, for the Respondent

Judgement

Krishna Rao, J.—The above reference u/s 66(1) of the Indian Income Tax Act (XI of 1922), arises under the following circumstances:

The respondent is the karta of a Hindu undivided family, which is the assessee. The family consisted of Sarathy and his two sons, namely, Doraiswami and Singaram. The karta, Sarathy, held 2,797 shares while each of his sons, Doraiswami and Singaram, held 100 shares in a limited company called the Chittoor Motor Transport Company Limited. It is common ground that the shares were acquired with the funds of the Hindu undivided family and the dividend earned on these shares was also shown as the income of the undivided family for purposes of assessment. During the assessment years 1955-56, 1956-57, the assessee received by way of advance or loan two sums, namely, Rs. 5,790 and Rs. 40,419 from the said company. The Income Tax Officer, Chittoor, included these two amounts as dividend income in arriving at the taxable income of the assessee. The assessee disputed the said inclusion mainly on two grounds, firstly, that the individual members are shown as shareholders in the registers of the said company and that the advance or loan paid to the undivided family cannot be regarded as a loan or advance paid to the shareholders and, secondly, that the said amounts cannot be regarded as payments on behalf of or for the

individual benefit of the shareholders inasmuch as the loan was raised not on behalf of or for the benefit of the assessee family but that it was made for the use of another limited company by name "The Vegetols Ltd". These objections raised by the assessee were rejected by the Income Tax Officer. The assessee ultimately went up in appeal to the Income Tax Appellate Tribunal. The Appellate Tribunal held that the advance or loan must be treated as advance or loan given to the assessee Hindu undivided family itself and not to the other company, viz., The Vegetols Ltd. It was further held by the Tribunal that it was the individual members of the assessee family that were registered as shareholders in the registers of the company and that a loan given to the Hindu undivided family cannot be treated as a loan advanced to a shareholder and that though the assessee family may be the beneficial owner of the shares, the undivided family cannot be regarded as a shareholder. In view of this conclusion, the Tribunal held in favour of the assessee that the two amounts cannot be included as dividend income. Aggrieved by the said order of the Tribunal, the Commissioner of Income Tax, Andhra Pradesh, Hyderabad, sought a reference u/s 66(1) of the Indian Income Tax Act of 1922, on which the Tribunal referred the following question to the High Court, viz.:

"Whether, on the facts and in the circumstances of the case, the amounts of Rs. 5,790 and Rs. 39,085 could be deemed to be the dividend income of the Hindu undivided family in the respective assessment years?"

2. This reference came up for hearing before a division bench of this court consisting of Chandra Reddy C. J. and Mohammed Mirza J. Without going into the merits of the case, the learned judges set aside the order of the Tribunal and remanded the appeal to the Appellate Tribunal for consideration of the question whether the payments can be regarded as having been made on behalf of and for the benefit of the shareholders. Against the said order of remand, the assessee carried the matter in appeal to the Supreme Court. The Supreme Court in Civil Appeals Nos. 15 and 16 of 1966 remanded the Referred Case to this court for disposal by its order dated 21st September, 1966, holding that the High Court has no power in a reference arising u/s 66 of the Income Tax Act to set aside the order of the Tribunal and to remand the appeal for fresh hearing as the jurisdiction of the High Court is only of an advisory character, that the High Court is not entertaining an appeal over the judgment of the Tribunal and that its function is merely to answer the question which has been referred. The Referred Case has therefore come up for hearing before us in pursuance of the order of remand by the Supreme Court.

3. As already noticed, the question referred for determination is "whether on the facts and in the circumstances of the case, the amounts of Rs. 5,790 and Rs. 39,085 could be deemed to be the dividend income of the Hindu undivided family in the respective assessment years". The determination of this question turns upon the interpretation of Section 2(6A)(e) of the Indian Income Tax Act, 1922 (XI of 1922), which reads as follows : (Omitting portions which are not relevant).

"2. (6A) "dividend" includes--.....

(e) any payment by a company of any sum by way of advance or loan to a shareholder or any payment by any such company on behalf or for the individual benefit of a shareholder, to the extent to which the company in either case possesses accumulated profits. "

4. This definition contemplates two kinds of payments which are included in the definition of dividend : (1) a payment made by way of advance or loan to a shareholder; (2) any payment made on behalf or for the individual benefit of a shareholder.

5. Shri K. Ranganathachari, the learned advocate for the assessee, contended that the amounts in question cannot be brought within the first limb of the section. The learned counsel contends that the assessee undivided family is not the shareholder and that it is only the individual members that are registered as shareholders in the books of the company, that it is only those persons in whose names the shares are registered that should be regarded as shareholders for the purposes of the Act and that the undivided family cannot be regarded as a shareholder on the ground that it is the beneficial owner in respect of the shares. In support of this contention, the learned counsel placed reliance on a ruling of the Assam High Court in Rameshwarlal Sanwarmal v. Commissioner of Income Tax, [1965] 58 ITR 271 in which it was held following the view of the Supreme Court in Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta., and Commissioner of Income Tax, Bombay City II Vs. Shakuntala and two Ors. etc., . that the word " shareholder " u/s 2(6A)(e) should receive the same meaning given to the word shareholder in Sections 18(5) and 23A of the Income Tax Act, that is, a person who is recorded as a shareholder in the books of the company and that a loan advanced to a Hindu undivided family which is the assessee, cannot be regarded as a payment by way of loan advanced to a shareholder. In coming to this conclusion, the Assam High Court dissented from a decision of the Mysore High Court in Kishanchand Lunidasingh Bajaj Vs. Commissioner of Income Tax, Mysore, in which it was held that the income derived by a benamidar-shareholder cannot be regarded as his real income. It is, however, not necessary to pursue this aspect of the case any further because Sri Kondaiah, the learned counsel for the revenue, does not seek to rely upon the first part of the definition, namely, that it is a payment "by way of advance or loan to a shareholder". The next point for consideration is whether the payment really falls within the second limb of the definition, that is, " whether it is a payment on behalf of or for the individual benefit of the shareholder". From the material placed before us, we find that there is no evidence to show that the payment was made on behalf of or for the benefit of the shareholders. As already pointed out, the contention of the assessee is that the loan was really for the benefit of the Vegetols Ltd., which is an entirely different entity from the assessee family. Unfortunately, no evidence has been placed before us which leads to the conclusion that the payment was made for the benefit or on behalf

of the shareholders. We are not prepared to agree with the suggestion of the learned counsel for the revenue that the payment may be presumed to be for the benefit of the members of the assessee family. We, therefore, answer the reference in the negative, that is, in favour of the assessee.

6. The assessee is entitled to the costs of this reference from the department. Advocate's fee Rs. 250.

Referred Case No. 62 of 1964 :

Pursuant to the order of remand made by the High Court the Income Tax Appellate Tribunal considered the question afresh and came to a different conclusion, that is, against the assessee and the question was again referred to this court at the instance of the assessee, but having regard to the decision of the Supreme Court setting aside the judgment of this court remanding the matter to the Tribunal for enquiry, this reference does not arise. There will be no order as to costs.