
(1976) 08 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 85 of 1971 (Refernce No. 42 of 1971)

Commissioner of Income Tax

APPELLANT

Vs

G. Shankaran

RESPONDENT

Date of Decision : 12-08-1976

Acts Referred:

Income Tax Act, 1922 — Section 2(6A)

Citation : (1976) 08 MAD CK 0018

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

Ismail, J.—The Income Tax Appellate Tribunal, Madras Bench, u/s 66(1) of the Indian Income Tax Act, 1922, has referred the following

question of law for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sum of Rs. 35,260 was not

includible in the income of the assessee as dividends u/s 2(6A)(e) of the Indian Income Tax Act, 1922 ?

2. The matter lies within a very narrow compass. The assessee is a shareholder of Trichy Mining Works Ltd. According to the entries in the

current account of the company, there were debts against the assessee of Rs. 18,864 by October 26, 1960, and further debts totalling Rs. 16,396

from October 31, 1960, to December 5, 1960, so that the total of the debts carne to Rs. 35,260. Thus, by December 5, 1960, the assessee had

taken an advance of Rs. 35,260. The previous year of the assessee for the assessment year 1961-62 was from April 1, 1960, to March 31, 1961.

The Income Tax Officer sought to assess this particular sum of Rs. 35,260 as dividend in the hands of the assessee under the provisions of Section

2(6A)(e) of the Indian Income Tax Act, 1922. Overruling the objections of the assessee, the officer made the assessment and, on appeal preferred

by the assessee, the Appellate Assistant Commissioner deleted this amount holding that the same cannot be considered to be dividend under the

provisions referred to above. When the department preferred a further appeal to the Income Tax Appellate Tribunal, the Tribunal agreed with the

conclusion of the Appellate Assistant Commissioner and dismissed the appeal. It is the correctness of this conclusion that is challenged in the form

of a reference brought to this court

3. Section 2(6A)(e) of the Indian Income Tax Act, 1922, reads as follows:

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

(e) any payment by a company, not being a company, in which the public are substantially interested within the meaning of Section 23A, of any

sum (whether as representing a part of the assets of the company or otherwise) 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. For attracting this section, (i) there must be a loan or advance to the shareholder by the company ; (ii) on the date of such loan, the company

must possess accumulated profits ; and (iii) to the extent of the accumulated profits, the loan will be treated as dividend in the hands of the

shareholder. It is not in dispute that the company in question is a company in which the public are not substantially interested. Therefore, if the other

requirements are satisfied, Section 2(6A)(e) will apply. There is no dispute again that the amount in question is an advance taken by the assessee

from the company. Consequently, the only other question is whether the company had accumulated profits on the date when the advance was

taken by the company. It is not disputed that as on March 31, 1960, the, profit and loss account of the company showed a debit balance of Rs.

4,989. Consequently as on April 1, 1960, during which financial year the assessee had taken the loan, the company had no accumulated profits

whatever. But the contention that was advanced on behalf of the department was

that during the year commencing from April 1, 1960, the company received Income Tax refunds amounting to Rs. 52,506 and this amount should be deemed to be the accumulated profits of the company.

It is this contention of the department which was rightly rejected by the Appellate Assistant Commissioner as well as the Income Tax Appellate

Tribunal. In our opinion, the Appellate Assistant Commissioner very rightly pointed out that, according to accepted principles of accountancy,

profits cannot be deemed to arise until the accounts are closed and, therefore, the accumulated profits of the company in the middle of the year

1960-61 can only be the balance as on the last day of the previous accounting year of the company, in the present case on March 31, 1960.

Admittedly, as on March 31, 1960, the company had no profits at all. The sum of Rs. 52,506 received by the company during the year from April

1, 1960, to March 31, 1961, need not necessarily constitute even the current profits of the company for that year because ultimately on the closing

of the accounts on March 31, 1961, the company may incur loss. Therefore, independent of the connotation of the expression "accumulated

profits", the receipt of Rs. 52,506 by way of Income Tax refunds during the year April 1, 1960, to March 31, 1961, cannot be said to be receipt

of even profits by the company so as to invoke Section 2(6A)(e) of the Indian Income Tax Act, 1922. As a matter of fact, the argument that was

advanced on behalf of the department before the Income Tax Appellate Tribunal has been set out as follows in paragraph 6 of its order:

The department has now come on appeal before us disputing the decision of the Appellate Assistant Commissioner, the only argument being that

in arriving at the accumulated profits of the company, the profits relating to the period up to the dates of the payments should also be taken into

account. We were not told what the extent of such profits would be and we have also not gone into various other rival contentions which may arise

in determining how much, out of the payments to the assessee, if at all any amount, could be treated as dividend.

5. This contention advanced by the department before the Appellate Tribunal is directly opposed to the conclusion of this court, as to what

constitutes accumulated profits, reached in Commissioner of Income Tax, Madras Vs. M.V. Murugappan and Others. Commissioner of Income

Tax, Madras V. A.M. M.V. Valliammai Achi and Others, . In this case, a Bench of this court with specific reference to Section 2(6A)(c) of the Indian Income Tax Act, 1922, actually pointed out that accumulated profits will mean only the profits which have been gathered or heaped up or stored up to the end of the previous year and it will not take in the current profits of the year during which the distribution or payment has been made. This view of this court has been affirmed by the Supreme Court in Commissioner of Income Tax, Madras Vs. M.V. Murugappan and Others, . Consequently, the expression ""accumulated profits"" certainly cannot take in the current profits even assuming that the Income Tax refund of Rs. 52,506 can be taken to be profits of the company when it received them. Under these circumstances, we are of the opinion that the conclusion of the Appellate Assistant Commissioner and, affirmed as it is by the Income Tax Appellate Tribunal, is correct in law and, therefore, we answer the question referred to us in the affirmative and in favour of the assessee. The assessee will be entitled to the costs of this reference. Counsel's fee is Rs. 500.