

**(1974) 07 AP CK 0014**

**In the Andhra Pradesh High Court**

**Case No : Case Referred No. 6 of 1973**

Commissioner of Income Tax

APPELLANT

Vs

Smt. Batool Begum

RESPONDENT

**Date of Decision :** 17-07-1974

**Acts Referred:**

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

**Citation :** (1976) 104 ITR 642

**Hon'ble Judges :** Obul Reddi, C.J.;Lakshmiah, J

**Bench :** Division Bench

**Advocate :** P. Rama Rao, for the Appellant; Y.V. Anjaneyulu, for the Respondent

## **Judgement**

Obul Reddi, C.J.—The following question has been referred to this court for decision at the instance of the Commissioner of Income Tax u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the assessee should be given credit for the tax deducted at source on dividends derived from the shares held in the name of Shri C. B. Taraporewala ?"

2. The facts culminating in this reference are these : The assessee is one Smt. Batool Begum. She was assessed through the trustees of the Nizam's Supplemental Family Trust on the income from dividends in respect of certain shares in some companies. The shares were all held in the name of Shri C. B. Taraporewala, the executive officer of the trust. The Income Tax Officer did not give credit for the tax deducted at source on the ground that Rule 30A of the Income Tax Rules does not cover the case. But on appeal, the Appellate Assistant Commissioner upheld the assessee's claim and directed the Income Tax Officer to give credit to the extent of the amount of tax deducted at source on the dividend income. The department then unsuccessfully preferred an appeal to the Tribunal. The Tribunal followed its earlier order in I.T.A. No. 589/Hyd/1969-70 dated March 28, 1972, and held that Rule 30A is applicable and the assessee is

entitled to the credit asked for in respect of the amount of tax deducted at source. The Commissioner then moved the Tribunal for reference and that is how the matter is before us.

3. The case of the assessee before the Tribunal and also before the Appellate Assistant Commissioner was that the department all these years before and after the assessment year 1968-69 gave credit for the tax deducted at source and only in this particular year the claim was disallowed by the Income Tax Officer. It was also her case that Sri Taraporewala was the duly constituted power-of-attorney of the Nizam and by Article 16 of the instrument he was entitled to exercise all the powers vested in the Nizam and, therefore, as the chief executive of the trust he happened to receive the dividends on behalf of the trustee and that the amounts so received were credited to the account of the beneficiary, viz., the assessee. It is, therefore, contended that whatever tax was deducted at source on the dividend income, the assessee, who is the beneficiary under the trust deed, is entitled to credit being given to her for tax deduction. This argument weighed with the Appellate Assistant Commissioner and the Tribunal. The Tribunal referred to the sovereign powers of Nizam and the special position he occupied and held that as the Nizam could not figure as a shareholder, his attorney, Mr. Taraporewala, figured as a shareholder in the registers of the company and in fact Mr. Taraporewala did nothing more than act as a post office or conduit pipe between the trustee and the company in the matter of receiving dividends. It is in that view that the Tribunal came to the conclusion that the cases of the Supreme Court including the case of Kishanchand Lunidasing Bajaj are not applicable to the facts of the case. It is also of the view that in all those cases the Supreme Court was concerned with the construction of Sub-section (5) of Section 18 relating to grossing up of income and, therefore, the opinion expressed in those decisions will have no application to the peculiar facts of this case.

4. Mr. Rama Rao, the learned counsel, appearing for the revenue, strenuously contended that there is nothing in the provisions of Section 199 of the Income Tax Act, 1961, or in Rule 30A of the Income Tax Rules, 1962, which entitles the assessee for credit being given to the tax deducted at source on the dividend income. To determine the question involved it is necessary to notice Section 18(5) of the Indian Income Tax Act, 1922, and the corresponding provision, Section 199 of the new Act, apart from Rule 30A of the Rules under the new Act. Section 18(5) of the 1922 Act reads:

"Any deduction made and paid to the account of the Central Government in accordance with the provisions of this section and any sum by which a dividend has been increased under Sub-section (2) of Section 16 shall be treated as a payment of Income Tax or super-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 therefore on the production of the certificate furnished under subsection (9) of Section 20, as the case may be,

in the assessment, if any, made for the following year under this Act."

5. Section 199 of the 1961 Act is in these terms :

"Any deduction made in accordance with the provisions of Sections 192 - 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."

6. Both the Sections 18(5) and 199 speak of deductions made on behalf of three classes of persons : (1) on behalf of a person from whose income deduction was made, (2) the owner of the security, and (3) the shareholder. What is necessary to entitle a person to have credit for the tax deducted is that he must have paid tax under one or other of the foregoing sections, viz., Sections 192, 193, 194, 194A and 195. Section 192 deals with deductions from salaries at source. Section 193 deals with deduction of tax at source on interest on securities. Section 194 deals with deduction on dividends received. We are not here concerned with the deductions made at source u/s 192 or deduction of tax at source on interest on securities u/s 193 or deductions u/s 194A or 195.

7. What Mr. Anjaneyulu, the learned counsel for the assessee, contends is that the assessee in this case falls within the first category of persons referred to in Section 199, viz., person from whose income the deduction was made. We are unable to agree with Mr. Anjaneyulu that this case falls in the category of persons from whose income deduction of tax is made at source u/s 192, Section 56 of the 1961 Act specifically refers to income from other sources and dividends come under that head. Now, the dispute relates to the income deducted at source on the dividend. That being the case, the case of the assessee must clearly fall only under the third category, viz., shareholders. The assessee's case throughout has been that under Rule 30A she is entitled to the credit for the tax deducted on the dividend received through the attorney of the Nizam. Rule 30A provides :

"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 :--....."

8. The assessee does not come within any one of the circumstances specified in Clauses (i) to (x) of the said rule. Rule 30A is subject to Sub-rule (2) of the same rule and this sub-rule lays down :

"The credit referred to in Sub-rule (1) shall not be given unless the person entitled to such credit furnishes to the Income Tax Officer a declaration in Form No. 15B made by him and the shareholder concerned, together with a certificate of deduction of tax at source in the Form No. 19."

9. When the circumstances specified in Clauses (i) to (x) do not exist, the further question of furnishing a declaration as provided in Sub-rule (2) does not at all arise.

10. The word "shareholder" occurring in Section 18(5) of the 1922 Act has been construed in a number of decisions. Chagla C.J., sitting with Tendolkar J., in *SHREE SHAKTI MILLS LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY CITY*, said:

"The "shareholder" mentioned in Section 18(5) of the Indian Income Tax Act is the person who owns certain shares and who is shown as a shareholder in the register of the company and it is only the shareholder of a company to whom dividends are paid who is entitled to the procedure of processing permissible under Sections 16(2) and 18(5)."

11. This decision was referred to with approval by the Supreme Court in *Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta*, . Hidayatullah J. (as he then was), speaking for the court, observed :

"A person who has purchased shares in a company under a blank transfer and in whose name the shares have not been registered in the books of the company is not a "shareholder" in respect of such shares within the meaning of Section. 18(5) of the Income Tax Act, notwithstanding his equitable right to the dividend on such shares, and is not, therefore, entitled to have his dividend income grossed up u/s 16(2) of the Act by the addition of the Income Tax paid by the company in respect of those shares, and claim credit for the tax deducted at source, u/s 18(5) of the Act."

12. In *Income Tax Officer, North Satara Vs. Arvind N. Mafatlal and Others*, the Supreme Court again held:

"It is only the registered shareholder who is entitled to the benefit of the credit for tax paid by the company u/s 18(5) as well as the corresponding grossing up u/s 16(2)."

13. In *Kishanchand Lunidasing Bajaj v. Commissioner of Income Tax [1960] 60 ITR 500 Shah J.* (as he then was), after referring to the earlier cases of the court, clearly stated:

"We are unable to accept the argument of counsel for the appellants that because the dividend income in respect of the shares cannot be "grossed up", and credit for tax paid cannot be obtained by the appellants, the appellants are not liable to be taxed in respect of dividend received by them. There is no provision in the Act which supports this plea, and the scheme of the Act lends no

countenance to an expedient which may lead to gross evasion of tax."

14. Repelling an argument similar to the one advanced before us by Mr. Anjaneyulu that though the shares may be registered in the name of Taraporewala, the real owner, viz., the trustee, will be entitled to the benefit u/s 199, Shah J., after referring to what Hidayatullah J. said in *How-rah Trading Company Ltd. v. Commissioner of Income Tax*, observed:

" These observations are not susceptible of any such meaning. Hidayatullah J. in that case was seeking to explain that dividend income cannot be "grossed up" in the hands of the real owner of shares if the shares are registered in the name of another person. He did not say that the real owner of shares cannot be taxed in respect of dividend received by him, if the shares are registered in the name of another person."

15. Admittedly, the assessee is not a registered shareholder. Her name does not find place in the register of shareholders. The registered shareholder is Taraporewala, the attorney of the Nizam. In view of what Shah J. said, there is no merit in the argument that the beneficiary, viz., the assessee, cannot be taxed in respect of the dividends received by her, all because the shares are registered in the name of Taraporewala. The fact that the Nizam was a sovereign ruler or had enjoyed special privileges and prerogatives does not at all help the case of the assessee. To be entitled to the benefit of Section 199, the assessee's name must find place in the register of shareholders. In the absence of her being such a shareholder, she is not entitled to the relief claimed.

16. Admittedly, no certificate was filed by the assessee as required by Section 203 of the Income Tax Act, 1961. Section 203 reads:

"203. Every person deducting tax in accordance with the provisions of Sections 192 - 194, Section 194A and Section 195 shall, at the time of credit or payment of the sum, or, as the case may be, at the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed."

17. Such a certificate was not filed by the assessee nor was it issued in her name. The certificate that was filed was obtained by Mr. Taraporewala in his name and filing of such a certificate obtained by a shareholder will not enure to the benefit of the assessee who is not the registered shareholder.

18. In the result, the reference is answered in the negative and in favour of the revenue. No costs.