(1959) 02 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No''s. 110 and 111 of 1957

Ismail APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 16-02-1959

Acts Referred:
Income Tax Act, 1922 — Section 16(2)

Citation : AIR 1960 Ker 92

Hon'ble Judges : Varadaraja Iyengar, J

Bench : Single Bench

Advocate : G.B. Pai, P. Govindan Nair and K.V.R. Shenoi, for the Appellant; G. Rama Iyer, for the Respondent

Final Decision : Allowed

Judgement

Varadaraja Iyengar, J.—The question is raised in both these petitions whether tax paid by a company which is a foreign company can be added on to the dividend paid by the company to a share-holder-assesses in computing his total income and whether such question can EC raised in this course and for purpose of rectification proceedings u/s 35 of the Income Tax Act. 1922.

2. The common petitioner in these petitions was first assessed for 2 different years on the basis of his net dividends as derived from a Ceylon company. He was subsequently proceeded against u/s 35 for revised assessment on basis of the gross dividends. Hence these O. Ps. challenging the respective orders. And the point is raised that Section 16 (2) of the Income Tax Act which provides for the grossing up as regards dividends does not apply to amounts paid by a foreign company towards Income Tax to a foreign State and there was no provision in the Act either which allows the amount of such tax being converted as the income of the assessee. Further proceedings under Sections 35 cannot also appropriately apply to cases involving this question.

3. Now the definition of Company in Section 2 (5A) confines it to Indian

Companies and certain associations, Indian or foreign with which we are not concerned. This means clearly that Section 16(2) with reference to grossing up of the net dividend paid to a share-holder before inclusion in the shareholder''s total income cannot apply to dividend from a foreign company and therefore to the dividend from the Moulana (Ceylon) Ltd., with which we are concerned. This question specifically came up for consideration in Commissioner of Income Tax, Bombay City Vs. Blundell Spence and Co. Ltd., and Chagla, C. J. delivering the judgment of the court said:

"Section 16 (2) can only apply to the Income Tax paid by a company in India at the rate laid down by the Finance Act and it cannot apply to the tax paid by a company outside India. There is no provision in the Act for adding to the dividend of a share-holder the tax paid by the company outside India"

and they held accordingly that in grossing up the dividends received by the assessee the Income Tax authorities were not entitled to take into consideration the tax paid by the company in the United Kingdom, Reference may also be made in this connection to V. Ramaswami Naidu and Another Vs. Commissioner of Income Tax, Madras, where the question was in regard to the deduction by the company of moneys paid by way of tax under the Ceylon Income Tax Ordinance and the learned Judges held that at no point of time did the title to these amounts vest in the assessee, neither were the amounts received by nor did they accrue or arise to the assessee and so they were not liable to be included in the income of the assessee for purpose of Indian Income Tax. I hold therefore that the revision of assessment by way of grossing up dividend here was wrong and uncalled for.

4. This renders it unnecessary for me to decide the question of the maintainability of the instant proceedings u/s 35. But I may indicate that if my decision was necessary I would have decided that there was nothing incompatible in these proceedings.

5. The result is that O. Ps. here are both allowed with costs with counsel''s fee Rs. 100/-

