

## LAXMIPAT SINGHANIA

v.

## COMMISSIONER OF INCOME-TAX, U.P.

August 30, 1968

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

*Income-tax Act (11 of 1922), s. 28A—Order by Income-tax Officer that income of company deemed to be distributed among shareholders - Assessment of income of individual shareholders for appropriate year—Deemed income not included—Amount actually distributed to shareholders in later year—Amount included in assessment of income of individual shareholders for that year—If permissible.*

The appellant was a shareholder in a company in which 'the public were not substantially interested' within the meaning of s. 23A of the Income-tax Act, 1922. At the company's general meeting held on April 22, 1939, the company failed to declare dividend to the extent of 60% of its assessable income of its previous year as reduced by the amount of income-tax and super-tax payable in respect thereof. By order dated November 18, 1940 the Income-tax Officer, acting under s. 23A(1), ordered that a certain sum shall be deemed to have been distributed as dividend amongst the shareholders of the company as at the date of its general meeting. On December 12, 1941 the Income-tax Officer determined the shares of the different shareholders but did not include the proportionate shares of the deemed income in the individual assessments of the shareholders for the assessment year 1940-41. On April 24, 1942, the company in a general meeting resolved to make a part of its reserve available as dividend to the shareholders and actually distributed the amount by crediting the account of each shareholder with his respective share therein. In proceedings for assessment of the income of the appellant for the assessment year 1943-44, the Income-tax Officer brought to tax the amount distributed and credited to the appellant, as amount liable to be taxed in that year.

The department, Tribunal and the High Court on reference, held that the amount deemed to be distributed could have been taxed in the assessment year 1940-41, but not having been assessed to tax in that year the appellant's share in the amount actually distributed was liable to be assessed in the assessment year 1943-44.

In appeal to this Court.

**HELD:** When the Income-tax Officer makes an order under s. 23A(1), the dividend is deemed to be distributed amongst the shareholders as at the date of the general meeting. By virtue of ss. 16(2) and 4(1)(b), the deemed dividend income is liable to be included in the total income of the shareholders on the date of the general meeting. The section expressly enjoins the Income-tax Officer to bring the proportionate share of every shareholder to tax in the appropriate year of assessment by including the amount in the total income of the shareholder of the previous year in which the date of the general meeting falls. It is not open to the Income-tax Officer, if income has accrued to the assessee, and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as income of another year on the basis of receipt. [907 C-D; 908 A-B, D]

- A Section 23A(4) does not confer any option on the Income-tax Officer to tax either the deemed income of the shareholder on the footing that it has accrued at the date of distribution under s. 23A(1) or the actual income at the date of actual receipt of the share, under s. 23A(4). Under the sub-section, if tax is paid by an assessee in respect of the proportionate share in the dividend deemed to be distributed in consequence of an order under s. 23A(1), any actual distribution of that dividend will not be liable to be taxed. A provision which prevents double taxation in respect
- B of the same income, one at the stage of deemed receipt, and another at the stage of actual receipt, cannot be converted into an enactment enabling taxation at the stage of receipt, if for any reason, the income was not taxed in the year in which it was by law expressly required to be assessed. [908 F-H; 909 A-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1188 of 1967.

Appeal from the judgment and decree dated September 28, 1962 of the Allahabad High Court in Misc. I.T. Reference No. 250 of 1953.

D *M. C. Chagla, A. N. Pareekh and B. P. Maheshwari*, for the appellant.

*C. K. Daphtary, Attorney-General, T. A. Ramachandran, R. N. Sachthey and B. D. Sharma*, for the respondent.

The Judgment of the Court was delivered by

- E **Shah, J.** Aterton West and Company Ltd., Kanpur, was a company in which at the relevant time "the public" were not "substantially interested" within the meaning of s. 23A of the Indian Income-tax Act, 1922. At the general meeting of the Company held on April 22, 1939, the Company failed to declare dividend to the extent of 60% of the assessable income of the Company of its previous year as reduced by the amount of
- F income-tax and super-tax payable by the Company in respect thereof. The Income-tax Officer by order dated November 18, 1940, ordered in exercise of the power under s. 23A of the Indian Income-tax Act, as then in force, that an amount of Rs. 3,32,691 shall be deemed to be distributed amongst the shareholders as on the date of the general meeting of the Company. On December 12, 1941, the Income-tax Officer determined the shares of the
- G different shareholders to whom the income was deemed to be distributed, but gave no effect to the order by including the proportionate shares in the amount of the deemed income in the individual assessments of the shareholders for the appropriate assessment year. On April 24, 1942, the Company in a general meeting resolved to make available out of its reserve Rs. 2,98,000 as
- H dividend to the shareholders and to credit the account of each shareholder his respective share therein. Pursuant to that resolution Rs. 23,328 were credited to the account of the appellant who held 1333 shares of the Company.

In proceedings for assessment of the income of the appellant for the year 1943-44 the Income-tax Officer brought the amount distributed by the Company to tax, after rejecting the contention of the appellant that the amount was not liable to be taxed in that year. The Income-tax Appellate Tribunal agreed with the order of the Income-tax Officer.

The following question under s. 66(1) of the Indian Income-tax Act, 1922, was referred to the High Court of Allahabad for opinion :

"Whether on the facts and in the circumstances of this case, the dividend of Rs. 23,328 which was credited in the accounts of the assessee during the accounting period of the assessment year 1943-44 could be subjected to tax under s. 16, sub-clause (2) of the Income-tax Act although an order under s. 23A of the Indian Income-tax Act had already been made on 12th December, 1941, for the assessment year 1939-40 in the case of the Atherton West & Co. Ltd.?"

The High Court answered the question referred in the affirmative. Against that order with certificate granted by the High Court this appeal is preferred.

The appellant says that his proportionate share in the amount deemed to be distributed was liable to be taxed in the assessment year 1940-41; the Commissioner says that the dividend deemed to be distributed could have been taxed in the year 1940-41, but not having been assessed to tax in that year the share of the appellant in the amount actually distributed was liable to be assessed in the assessment year 1943-44.

The statutory provisions may first be noticed. Section 23A as it stood at the relevant time provided :

"(1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting are less than sixty per cent of the assessable income of the company of that previous year, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof he shall, . . . . make . . . . an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof shall be deemed to have been distributed as dividends amongst

A the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income.

B . . . . .”  
Where the Income-tax Officer makes an order against the Company in the conditions prescribed by s. 23A (1), dividend is deemed to be distributed amongst the shareholders as at the date of the general meeting. The distribution is purely notional : but by the express provision contained in s. 23A the Income-tax  
C Officer is enjoined to bring the proportionate share of every shareholder to tax in the appropriate year of assessment. The date of the general meeting determines the date on which the dividend is deemed to be distributed amongst the shareholders, and the proportionate share is liable to be included in the total income of each shareholder of the previous year in which the date falls.

D Two other related provisions may also be noticed : Section 16(2) insofar as it is material, provides :

E “For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him,

. . . . .”  
Section 4(1)(b) of the Indian Income-tax Act, 1922, insofar as it is material, provides :

F “(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived, which

(a) . . . . .

G (b) if such person is resident in the taxable territories during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or

H (ii) . . . . .  
(iii) . . . . .”

By virtue of s. 16(2) read with s. 4(1)(b) the deemed dividend income is liable to be included in the total income of the shareholders on the date of the general meeting of the Company. The Act leaves no option to the Income-tax Officer : he is enjoined to include the amount in the total income of the shareholder of the previous year in which the date of the general meeting falls.

In the present case the dividend was deemed to be distributed by the Company as on April 22, 1939. The proportionate share of the dividend was liable to be included in the total income of each shareholder of the previous year in which the date April 22, 1939, fell. But the amount was never included in the assessee's total income of that previous year : it was sought to be brought to tax when a part of the reserve of the Company was actually distributed by crediting to the shareholders' accounts their proportionate shares on May 29, 1942. It is a fundamental rule of the law of taxation that unless otherwise expressly provided, income cannot be taxed twice. Again it is not open to the Income-tax Officer, if income has accrued to the assessee, and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as income of another year on the basis of receipt.

The Attorney-General appearing on behalf of the Commissioner placed strong reliance upon sub-s. (4) of s. 23A which as it stood at the material time provided :

"Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year."

This clause was enacted with the object of preventing double taxation of the same income : it was enacted thereby that if tax is paid by an assessee in respect of his proportionate share in the dividend deemed to be distributed in consequence of an order under s. 23A, any actual distribution of that dividend will not be liable to be taxed. The clause does not mean nor does it imply that if in contravention of the express statutory provision in s. 23A the proportionate share of the shareholder in the deemed income is not included in the total income of the appropriate year of assessment, it is liable to be included when the dividend is actually paid, credited or distributed to the shareholder. It does not confer any option to the Income-tax Officer to tax either the deemed income in the hands of the shareholder on the footing that it has accrued at the date of distribution under s. 23A(1), or at the date of actual receipt of the share under s. 23A(4). A provision which prevents double taxation in respect of the same income, once at the stage of deemed receipt, and another at the

- A stage of actual receipt, cannot be converted into an enactment enabling taxation at the stage of receipt, if for any reason the income is not taxed in the year in which it was by express injunction of law required to be assessed under the provisions of the statute.

We are, therefore, unable to agree with the observations of the High Court that—

- B “It [sub-s. (4) of s. 23A], therefore clearly contemplates the possibility of tax having been levied on a deemed dividend and also later when that dividend was in fact distributed by the company. This would indicate that the legislature never intended that there should be a bar to assessing a dividend when actually received or distributed although it had earlier been treated by the Department and brought to tax as deemed dividend in the hands of the shareholders.”
- C

The observation is, in our judgment, contrary to the express words of the statute.

- D The answer recorded by the High Court is, therefore, discharged, and the question submitted will be answered in the negative. The appeal is allowed with costs in this Court. The High Court has passed no order as to costs, and we do not propose to interfere with that order.

V.P.S.

*Appeal allowed.*