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**BENARAS STATE BANK LTD.**

v.

**COMMISSIONER OF INCOME-TAX, LUCKNOW**

July 25, 1969

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

*Indian Income-tax Act (11 of 1922), ss. 2(14-A), 14(2)(c) and 16(2) and Adaptation of Laws Order, 1950—Dividend income accruing in Indian State—Received within taxable territories—Liability to tax.*

C

The appellant-Bank (assessee) was a share-holder in a company which declared a dividend on July 25, 1949. The State of Benares in which the Bank had its registered office merged with the Indian Union on December 1, 1949. Cheques for the amount of dividend were encashed by the assessee on December 31, 1949. The assessee's year of account was the calendar year. The dividend was sought to be taxed in the assessment year 1950-51, but the assessee contended that : (1) the dividend income was exempt from tax under s. 14(2)(c), as it stood in the year of assessment; and (2) that it must be deemed to have been received by the assessee even on July 25, 1949, on which date the assessee was a non-resident.

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HELD : (1) On December 1, 1949, by merger, the State of Benares became part of the taxable territories as defined in s. 2(14-A) of the Act. Hence, though the dividend might have accrued in an Indian State, it was received by the assessee in the taxable territories on December 31, 1949, and, by the express words in s. 14(2)(c), as modified by the Adaptation of Laws Order, 1950, the dividend income was not exempt from tax liability. [671 C—E]

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(2) Dividend income is deemed to have been received by an assessee, under s. 16(2), only when it is paid, credited or distributed, or, is deemed to be paid, credited or distributed. Though paid does not contemplate 'actual receipt' the dividend can only said to be paid, not when it is declared, but when the company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. In the present case, there was no evidence that before December 31, 1949, the dividend income was paid, credited or distributed to the assessee within the meaning of s. 16(2). [671 E—G; 672 A—B]

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*J. Dalmia v. C.I.T. Delhi*, 53 I.T.R. 83 (S.C.), followed.

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**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1033 of 1966.**

Appeal by special leave from the judgment and order dated September 21, 1964 of the Allahabad High Court in Income-tax Misc. Case No. 121 of 1956.

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*S. T. Desai*, *A. K. Verma* and *J. B. Dadachanji*, for the appellant.

*Jagdish Swarup*, *Solicitor-General*, *S. K. Aiyar*, *R. N. Sachthey* and *B. D. Sharma*, for the respondent.

The Judgment of the Court was delivered by

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**Shah, Ag. C.J.** By order dated August 23, 1968, we called for a supplementary statement on the issue whether dividend warrants were delivered by the Glass Works to the Bank on August 3, 1949. The Tribunal has submitted a statement of the case that the only relevant facts proved are that the dividend was declared on July 25, 1949 and the Bank encashed the dividend warrants on December 31, 1949. The appeal must therefore be decided on the footing that the dividend warrants were handed over to the Bank by the Glass Works on August 3, 1949, is not proved.

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The material facts which have a bearing on the point in issue are these. The year of account of the Bank is the calendar year. The State of Benaras in which the Bank had its registered office merged with the Indian Union on December 1, 1949. The Glass Works declared a dividend at a General Meeting on July 25, 1949. Cheques for Rs. 69,000 issued by the Glass Works in favour of the Bank in payment of the dividend were encashed by the Bank on December 31, 1949.

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The dividend received by the Bank has been brought to tax in the assessment year 1950-51. Counsel for the Bank urged that the Bank cannot be assessed to tax in respect of dividend accruing to it at a time when the Bank was a non-resident. It is urged that by virtue of s. 14(2)(c) of the Income-tax Act, 1922, as then in force, the income received by the Bank was not liable to be taxed. At the relevant time s. 14(2)(c) read as follows :

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“(2) The tax shall not be payable by an assessee—

(c) in respect of any income, profits or gains accruing or arising to him within an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee, or are assessable under section 12B or section 42.”

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By the Adaptation of Laws Order, 1950, the words “an Indian State” were substituted by the words “a Part B State”, and the words “British India” were substituted by the words “taxable territories”. Section 2(14A)—(which was also incorporated by the Adaptation of Laws Order, 1950, with effect from April 1, 1950) insofar as it is material provides :

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“ ‘taxable territories’ means—

(a)

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(b) as respects any period after the 14th day of August, 1947, and before the 26th day of January,

A 1950, the territories for the time being comprised in the Provinces of India, but excluding the merged territory of Cooch-Bihar,

B Provided that the taxable territories shall be deemed to include—

(a) the merged territories—

(i) as respects any period after the 31st day of March, 1949, for any of the purposes of this Act, and

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The State of Benaras after merger on December 1, 1949 with the Dominion of India formed part of the State of Uttar Pradesh and was on that account part of the taxable territories by virtue of the definition contained in s. 2(14A) of the Indian Income-tax Act. Assuming that the dividend accrued within an Indian State, it was received by the Bank in the taxable territories on December 31, 1949, and by the express words contained in s. 14(2)(c) of the Indian Income-tax Act, 1922, before it was omitted by the Taxation Laws (Extension to Jammu & Kashmir) Act, 1954, it was not exempt from liability to payment of tax, even if the right thereto had accrued to the Bank in an Indian State.

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It was then urged that the dividend must be deemed to have been received by the Bank on July 25, 1949—the day on which it was declared and on that date the Bank being a non-resident it could not be brought to tax. But under s. 16(2) of the Indian Income-tax Act, 1922, the dividend income was taxable only in the year in which it was paid, credited or distributed, or was deemed to be paid, credited or distributed. This Court observed in *J. Dalmia v. Commissioner of Income-tax, Delhi*<sup>(1)</sup> that the expression “paid” in s. 16(2) does not contemplate actual receipt of the dividend by the member: in general, dividend may be said to be paid within the meaning of s. 16(2) when the Company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. It was also held that the Act does not make dividend income taxable in the year in which it becomes due: it is taxable only in the year in which it is paid, credited or distributed. The Court overruled the decision of the Bombay High Court in *Commissioner of Income-tax v. Laxmidas Mulraj Khatau*<sup>(2)</sup> in which it was held that when dividend is declared, liability arises on the part of the Company to make that payment to the shareholder and with regard to the shareholder when the income represented by that dividend accrues

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(1) 53 I.T.R. 83 (S.C.)

(2) 16 I.T.R. 248.

or arises to him, and that the fact that the actual payment of the income is deferred is immaterial and irrelevant.

In the present case there is no evidence that before December 31, 1949, dividend was paid, credited or distributed to the Bank. By virtue of s. 4(1)(a) of the Income-tax Act, 1922, the income was held properly taxable in the assessment year 1950-51. It is unnecessary therefore to consider whether even if the Bank was a non-resident on July 25, 1959, by virtue of s. 4(1)(b)(ii) it was liable to be taxed in respect of the dividend income in the year of assessment 1950-51.

The appeal fails and is dismissed with costs including the costs of the hearing at which the order calling for a supplementary statement was made.

V.P.S.

*Appeal dismissed.*