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MOHAN SINGH OBEROI

v.

COMMISSIONER OF INCOME-TAX, WEST BENGAL
November 29, 1972

[K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA JJ.]

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Income-tax—Shares standing in the names of wife and sons of assessee—Dividend income from shares—When to be included in total income of assessee—Burden of proof.

C For the assessment years 1953-54 and 1954-55 the appellant showed the gross dividend derived by him from shares held by him, as his income. The Income-tax Officer however included in the assessee's income the gross dividend of certain shares held by the assessee's wife and sons. The Appellate Assistant Commissioner confirmed the order. The Appellate Tribunal held in favour of the assessee on the ground that though the shares might have been acquired out of the secreted profits of the appellant, in the absence of any evidence that the shares remained in substance the property of the assessee, the dividend income could not be included in his total income, and that it was only the wife and the sons of the assessee, who were registered holders of the shares, that could be assessed for the dividend income from those shares.

D The High Court, in reference, held against the assessee.

E Dismissing the appeal to this Court,

F HELD : (1) The order of the Income-tax Officer showed that it had been admitted by the assessee in the past, before the Department, that the shares in question, standing in the name of the assessee's wife and sons, belonged to the assessee and were his own investments. The Tribunal nowhere observed that the observations of the Income-tax Officer were factually incorrect or that the said admission had not been made by the assessee. There was ample material to justify the inference that the assessee was the real owner of the shares and that they were held by him benami in the name of his wife and sons. [1061 E-F, G-H]

G (2) If the Tribunal had given a finding that the purchase was not benami, and if the finding was based on some evidence, the same would have to be accepted in proceeding in reference under s. 66(1) of the Indian Income-tax Act, 1922. But the tribunal nowhere dealt with the question as to whether the purchase of shares was or was not benami in the name of the wife and sons of the assessee. [1063 B-C]

H (3) Once it was found that the assessee was the real owner of the shares and that they had been purchased benami in the names of his wife and sons, it would be presumed that the ownership of the shares continued to remain vested in the assessee, *unless it was shown by him* that because of some subsequent event, he had ceased to be the owner of the shares. Therefore, even though the wife and sons were the registered holders of the shares, the dividend income from those shares should be assessed as the assessee's income. The tribunal excluded the dividend income on a ground which was not legally tenable. [1062 E-H]

Kishanchand Lunidasing Bajaj v. Commissioner of Income Tax, [1966] 60 I.T.R. 500 followed.

Howrah Trading Co. v. Commissioner of Income tax, [1959] 36 I.T.R. 215 and *Meenakshi Mills v. Commissioner of Income Tax*, [1956] S.C.R. 691 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2492 and 2493 of 1969.

Appeals by special leave from the judgment and order dated November 25, 1969 of the Calcutta High Court in I. T. Reference No. 149 of 1963.

S. T. Desai, T. R. Bhasin, R. N. Banerjee and Lalit Bhasin, Ravinder Narain, J. B. Dadachanji and O. C. Mathur for the appellants.

B. Sen, P. L. Juneja, S. P. Nayar and R. N. Sachthey, for the respondent.

KHANNA, J. These two appeals by special leave are directed against the judgment of Calcutta High Court whereby it answered the following question referred to it under section 66(1) of the Indian Income Tax Act, 1922 in the negative in favour of the revenue :

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in excluding from the assessable income of the assessee for the assessment years 1953-54 and 1954-55 the sums of Rs. 56,586 and Rs. 39,542 which were the amounts of dividend received by the assessee’s wife and two sons from shares acquired out of the profits of the assessee ?”

The matter relates to assessment years 1953-54 and 1954-55, the corresponding previous years for which ended on March 31, 1953 and March 31, 1954 respectively. The appellant-assessee is the Managing Director of Messrs Hotels (1938) Ltd. and other associated companies controlling a number of hotels in India. For the assessment years 1953-54 and 1954-55, the appellant showed incomes of Rs. 66,694 and Rs. 87,570 as the gross dividend derived by him from the following shares held by him :

(i) Associated Hotels of India Ltd.	109,606 shares
(ii) Northern India Caterers Ltd.	20 shares
(iii) Oberoi Hotels (1) Ltd.	10 shares

The Income Tax Officer found that besides the above mentioned shares, the appellant’s wife and two sons held shares of Associated Hotels of India Ltd. and Northern India Caterers Ltd. and included the gross dividend of those shares in the total income of the

A assessee. In the order relating to assessment year 1953-54, the Income Tax Officer in this context observed as under :

B "Besides the income shown from the above mentioned shares of the above named concerns, other income from dividends which are held by Benamidars of the assessee have also to be assessed in the hands of the assessee. It is seen from the past records that the following shares standing in the names of the assessee's wife Smt. I. D. Oberoi and the assessee's two sons, namely, Mr. P.R.S. Oberoi and Mr. T.R. Oberoi do in fact belong to the assessee and are his own investments. The facts have also been admitted by the assessee before the department in the past years. The income from these shares is therefore to be rightly included in the hands of the assessee and assessed accordingly.

	Name of shareholder	Gross dividend Rs.
D	1. Smt. I. D. Oberoi, wife of the assessee. (a) 15,886 shares of Associated Hotels (I) Ltd. (b) 30 shares of Northern India Caterers Ltd.	3,971 15,273
	2. Mr. T.R. Oberoi, son of the assessee. (a) 50 Shares of Northern India Caters Ltd. (b) 6, 823 shares of Associated Hotels (I) Ltd.	25,454 1,706
E	3. Mr. P.R.S. Oberoi son, of the assessee. (a) Northern India Caterers Ltd (20 shares)	10,182
		56,586

Similarly, for assessment year 1954-55 the Income Tax Officer included the following dividends in the total income of the assessee:

	Name of the shareholders	Net Dividend
	Smt. I.D. Oberoi 15,886 shares of Associated Hotels of India Ltd. 30 shares of Northern India Caterers Ltd.	3,177 10,500
G	Shri T.R. Oberoi 50 shares of Northern India Caterers Ltd. 6,823 shares of Associated Hotels of India Ltd.	17,560 1,365
	Shri P.R.S. Oberoi: 20 shares of Northern India Caterers Ltd..	7,000
		39,542

H When the assessee went up in appeal, the Appellate Assistant Commissioner observed that the stand of the assessee that the dividend in respect of the shares held by his wife and two sons should not be included in his income had already been negatived by the Appellate Assistant Commissioner as per order dated Nov-

ember 24, 1959 for the assessment year 1952-53. The Appellate Assistant Commissioner accordingly repelled the contention on behalf of the assessee that the amounts of Rs. 56,586 and Rs. 39,542 should not be included in his income. In the order dated November 24, 1959 for the assessment year 1952-53, the Appellate Assistant Commissioner had referred to the following observations of the Income Tax Investigation Commission :

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"It was found that Sri M. S. Oberoi owned 78,650 ordinary shares in his own name, 15,885 shares in the name of his wife Sm. Iswarani Debi, 6823 shares in the name of Sri T. R. Oberoi and 5,000 shares in the name of his daughter Sm. Rajarani Kapoor out of a total of 2000,000 ordinary shares issued and paid up as on 31-2-47".

Reliance was also placed upon the following extract from a letter addressed by the assessee to the Commission :

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"In preparing the statement of wealth, I have taken into account all the assets of which I and other members of my family are possessed. According to the statement of wealth furnished the evaded income comes to Rs. 20 lakhs. All the money that was evaded is invested mainly in the shares of Associated Hotels of India Ltd. There has been great fall in the price of these shares. In fixing up my liability and the payment thereof due account will have to be taken of the fall in prices of these shares and my capacity to pay."

It was also found that the Income Tax Investigation Commission had held that the shares had been acquired by the assessee out of the suppressed income which was determined to be Rs. 16,62,211.

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In second appeal before the Income Tax Appellate Tribunal, the assessee contended that the Income Tax Investigation Commission had considered only the shares of the Associated Hotels of India, but the bulk of dividend included in the assessee's income in the two assessment years in question was the dividend declared by Northern India Catereres Ltd. Contention was further advanced that assuming that the shares in question were acquired out of the assessee's secreted profits in 1943, the wife and the two sons of the assessee could only be assessed in respect of the dividend income as they were the registered holders of those shares. These contentions found favour with the Tribunal. The Tribunal accordingly directed that the income assessed for the assessee should be reduced by the amounts of Rs. 56,586 and Rs. 39,452 in the assessment years 1953-54 and 1954-55 respectively. On application filed by the Commissioner, the question reproduced above was thereafter referred to the High Court.

- A The High Court, in answering the question in the negative, observed that the shares in question had been purchased by the assessee in the name of his wife and two sons and, in the circumstances, the natural inference was that the purchases were benami transactions. It was, in the opinion of the High Court, for the assessee to discharge the burden which lay upon him to show that the shares had not been purchased by him benami in the name of his wife and sons but he had failed to discharge that burden. The High Court also held that the real owner could be assessed on the dividend income even though his wife and sons were the registered holders of the shares. In the result, the question referred, as already mentioned earlier, was answered in the negative.
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- C In appeal before us, Mr. Desai on behalf of the assessee-appellant has contended that the High Court was in error in interfering with the finding of the Tribunal that the wife and the two sons of the assessee, who were the registered holders of the shares in question, could only be assessed for the dividend income from those shares.
- D In this respect we find that the question referred to the court assumes that the shares on account of which the wife and the two sons of the assessee received the dividend amounts of Rs. 56,586 and Rs. 39,542 had been acquired out of the profits of the assessee. In addition to that, we find that the order of the Income Tax Officer for the assessment year 1953-54 shows that it had been admitted by the assessee in the past before the department that the shares in question standing in the name of the wife and two sons of the assessee belonged to him and were his own investments. Although it is normally for the department to show that the apparent is not the real, in the present case we find that there was ample material to justify the inference that the assessee was the real owner of the shares and they were held by him benami in the name of his wife and two sons.
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- G It was urged before us during the course of arguments that no such admission had been made, but nothing was brought to our notice to show that the above observation made by the Income Tax Officer had been challenged in appeal. No copy of the memorandum of appeal filed against the order of the Income Tax Officer has been produced. We also find that the above observation containing the admission has been incorporated in the statement of the case and is an integral part of it. The Tribunal nowhere observed that the above observation was factually incorrect and that the said admission had not been made by the assessee. It was not even mentioned that the above admission was erroneous. On the contrary, the Tribunal took the view that as the wife and two sons of the assessee were the registered holders of the shares in question, dividend income from those shares should have been assessed as their income and not that of the assessee. The Tribu-
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nal in this context relied upon the decision of this Court in *Howrah Trading Co. v. Commissioner of Income Tax*⁽¹⁾. What was held in that case was that a person who purchases shares in a company under 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 Indian Income Tax Act, 1922 notwithstanding his equitable right to the dividend on such shares. It was further held that such a person was not entitled to have his dividend income grossed up under section 16(2) of the Act by the addition of the income tax paid by the company in respect of those shares.

The decision in *Howrah Trading Co.* (supra) was considered by a larger bench of this Court in *Kishanchand Lunidasing Bajaj v. Commissioner of Income Tax*⁽²⁾. It was held in that case that a company for its purpose does not recognise any trust or equitable ownership in shares. It merely recognizes the registered shareholder as the owner and pays dividend to that shareholder. But the shares may because of a trust or other fiduciary relationship, belong to a person other than the registered shareholder, and the dividend distributed by the company would for the purpose of tax be deemed to accrue or arise to the real owner of the shares. The scheme of "grossing up", it was observed, is not susceptible to the interpretation that the income from dividend is to be regarded as the income only of the registered shareholder and not of the real owner of the shares. In the aforesaid case, shares were acquired with the funds of a Hindu undivided family in the name of the *karta*. It was held that the Hindu undivided family could be assessed to tax on the dividend from those shares.

We thus find that the Tribunal excluded the dividend income on a ground which was not legally tenable.

The Tribunal also observed that though the shares might have been acquired out of the secreted profits of the appellant, in the absence of any evidence that the shares remained in substance the property of the assessee, the dividend income could not be included in his total income. The approach of the Tribunal in this respect too was erroneous. Once it was found that the assessee was the real owner of the shares and they had been purchased benami in the name of his wife and two sons, it would be presumed that the ownership of the shares continued to remain vested in the assessee, unless it was shown that because of some subsequent event, he had ceased to be the owner of the shares. No such attempt was made by the assessee.

In view of the admissions referred to in the order of the Income Tax Officer, nothing hinges, in our opinion, upon the fact

(1) [1959] 36 I.T.R. 215.

(2) [1966] 60 I.T.R. 500.

A that the shares referred to in the letter of the assessee to the Income Tax Investigation Commission were mainly of the Associated Hotels of India and not of Northern India Caterers Ltd.

B We may also observe that if the Income Tax Appellate Tribunal records a finding on the point as to whether a purchase was made benami or not, such a finding as observed in *Meenakshi Mills v. Commissioner of Income Tax*⁽¹⁾ would be considered to be one of fact. If such finding is based upon some evidence, the same would have to be accepted in proceedings in a reference under section 66(1) of the Indian Income Tax Act. This aspect, however, does not help the assessee in the present case because the Tribunal nowhere dealt with the question as to whether the purchase of shares was or was not benami in the name of the wife and sons of the assessee.

C Submission was made by Mr. Desai during the course of arguments for adjournment of the appeal to enable the assessee-appellant to produce the detailed findings of the Income Tax Investigation Commission. We, however, declined to do so as, in our opinion, the appeal had to be disposed of on the basis of the material before us.

As a result of the above, we dismiss the two appeals with costs. One hearing fee.

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V.P.S.

Appeals dismissed.