A COMMISSIONER OF INCOME TAX WEST BENGAL I, CALCUTTA

v.

CLIVE INSURANCE CO. LTD., CALCUTTA

May 2, 1978

B [Y. V. CHANDRACHUD, C.J., D. A. DESAI AND R. S. PATHAK JJ.]

Income-tax Act, 1922, S. 49D—Relief in respect of incomes accruing or arising outside the taxable territories—Warrant of payment of interim dividend shows net dividend after deducting at source U.K. income-tax and certified to be so —Whether relief under s. 49D of the Act permissible to the assessee.

The claim for relief under s. 49D of the Income Tax Act 1922 made by the respondent-assessee Company in its return for the assessment year 1960-61, the
C relevant previous year being the calendar year 1959, in respect of the net dividend income of Rs. 15,266/- after deduction of British income-tax of Rs. 9,881/- was rejected by the Income-tax Officer without making the reasons for his decision explicit.

In appeal by the assessee, the Appellate Assistant Commissioner confirmed the decision of the Income-tax Officer observing that even if it be held that the net dividend income suffered U.K. tax by deduction; there is nothing to show that the tax deducted was paid to U.K. Revenue and therefore s. 49D is not
D attracted. In further appeal by the assessee the Tribunal accepted the contention of the assessee and at the instance of the Revenue referred the question to the High Court. The High Court after an exhaustive examination of the relevant provisions of the Income-tax Act of U.K. and the decisions bearing on the question confirmed the decision of the Tribunal.

Dismissing the appeal by certificate, the Court

HELD : 1. All the requirements of s. 49D of the Income-tax 1922 read
E with Explanation have been satisfactorily established by the assessee and therefore the High Court rightly answered the question in the affirmative in favour of the assessee. [854 F]

2. To be eligible for relief under s. 49D read with its Explanation, the assessee must establish excluding the non-disputed requirement that (i) the assessee has income which has accrued or arisen without taxable territory; and (ii) the assessee has paid in any country income-tax by deduction or otherwise under the law in force in that country; (iii) in that event the assessee would be entitled
F to the deduction from Indian income tax payable by him; (iv) a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is lower. The expression 'rate of tax of the said country' must be given the meaning as set out in para (iii) of the explanation and in doing so the importance of the words 'income assessed in the said country' has to be borne in mind. [847 F-H]

3. Under U.K. law, the company has to pay tax on its profits or gains as its
G liability and not as agent of members to whom dividend is distributed out of profits. Therefore, if dividend is distributed after profit or gain of the company is charged to tax, it is optional with the company either to deduct or not to deduct income tax paid by it from the dividend paid to members and if it chooses to exercise the option it can do so at standard rate. There is no specific provision under U.K. Income-tax Act which would show that dividend income in U.K. in the hands of the assessee is exempt from payment of income tax. The company is liable to pay income-tax on its profits and gains and s. 184 enables the company to deduct from the dividend paid out of profits, tax at the standard
H rate for the year in which the amount payable becomes due. Dividends which represent the distribution of a taxed Fund are, therefore styled as franked income so far as concerns any further taxation at the standard rate, *i.e.* the rate at which deduction has been made. The assumption underlying this position is that the dividend represents the residue of the total income which has already been

taxed in the hands of the company, the fiction being that if tax was not paid A
by the company there would have been a higher dividend and, therefore, the dividend income is already taxed. The company is treated as a large partnership and though this system is highly artificial but it is a domestic expedient limited in its operation to U.K. [849 F-G, 850 B-D, 851 E]

According to the statute law of U.K. and the interpretation put on it by the highest court in that country, the dividends which have borne tax in the hands of the paying company were treated as franked income in the hands of
the assessee. In other words it would mean that the income is the income in B
the form of dividends has been subjected to tax. It is immaterial whether they are taxed in the hands of the assessee or not but they are deemed to have been taxed in the hands of the assessee in U.K. Dividends which are styled as franked income have borne tax at the source. [852 C-D, F]

If the dividends styled as franked income have been charged to income-tax at the source, it would mean that it is the income in respect of which income tax
has been paid by deduction or otherwise in accordance with the law in force in C
the country in which the income accrued. If it is now charged to tax under the Indian Income-tax Act it obviously becomes a doubly taxed income and one of the requirements of s. 49D would be satisfied. [852 F-G]

Bradbury v. *English Sewing Cotton Co. Ltd.*, 8 Tax Cases 481 (House of Lords), *Commissioners of Inland Revenue* v. *Cull*, 22 Tax Cases 603 at 636 *Canadian Eagle Oil Co. Ltd.* v. *The King*, 27 *Tax Cases* 205; *Cenlon Finance Co. Ltd.* v. *Ellwood*, 40 Tax Cases 176 at 205; *F. S. Securities Ltd.* v. *Com-*
missioners of Inland Revenue, 41 Tax Cases 666 discussed. D

4. Undoubtedly to be entitled to relief under s. 49D the requirements for eligibility therein prescribed must be satisfied by the assessee. One such requirement is that income in respect of which relief from double taxation is sought, is the income in respect of which he has paid income-tax by deduction or otherwise under the law in force in the country in which the income accrued. [853 A]

While examining the question whether the assessee has fulfilled this re-
quirement, it will have to be ascertained what is the law bearing on income-tax E
in the country in which income has arisen and whether according to that law, the said income has suffered tax by deduction or otherwise again according to the law in that country. According to the income-tax law in U.K. dividends represent the distribution of a taxed fund and are therefore styled as franked income. The payment of tax by the company and deduction made at standard rate from dividend distributed to shareholder operates in relief of the shareholders. Such dividend income according to the law of the country where it has arisen is deemed to have been subjected to tax. Viewed from this angle
the dividend income in the hands of shareholder is not charged to income-tax. F
[853 B-C]

Inland Revenue Commissioner v. *Blott*, [1921] A.C. 171 @ 201; quoted with approval.

5. Once it is accepted that the dividend represents franked income distributed out of profits and gains and not liable to further income-tax in the hands of member, it clearly transpires that for relief against double taxation it is the income which has been subjected to tax in the foreign country in which it has
arisen and irrespective of the fact that there is no provision comparable to s. G
18(5) of our Act in the Income-tax Act of U.K. yet the payment of tax by the company operates in relief of the shareholder and on that account alone the dividend income is not chargeable to tax in U.K. Therefore, it can be said with reasonable certainty that in respect of the dividend income of the assessee income-tax has been paid by deduction or otherwise under the law in force in the country in which income has arisen. The principle of agency in payment by the company is worked out on the basis of company being treated as a large
partnership so that the payment of tax by the company would operate to H
discharge the quasi-partners. [854 D-E]

Commissioner of Income-tax v. *Tata Sons P. Ltd.* [1974] 97 ITR 128; *Commissioner of Income Tax* v. *Cotton Fabrics Ltd.* [1976] 104 ITR 233 over-ruled,

6. The expression 'income assessed in the foreign country would clearly, in the context in which it is used, mean subjected to tax in the foreign country. In order to ascertain whether the rate under the Indian Income-tax Act or the rate of tax in the foreign country is lower, apart from any other consideration, the rate of tax in U.K. in the context of dividend income is easily ascertainable inasmuch as company can deduct income-tax at standard rate only. Undoubtedly, where the assessee was also liable to pay surtax in U.K. on the dividend income no complication would arise in working out the rate because surtax is payable on dividend income. But in the present case that difficulty does not arise as the assessee being a company, it was neither liable to any surtax nor entitled to any relief in U.K., and, therefore, the rate of tax can be worked out with certainty consistent with the provisions of para (iii) of the Explanation. The assessee thus, in respect of the dividend income has paid tax at the standard rate and that is the rate of tax of the foreign country for the purpose of para (iii) of the Explanation. [853 F-H, 854 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1590 (T) of 1973.

From the Judgment and Order dated the 11th May 1971 of the Calcutta High Court in Income Tax Ref. No. 138 of 1967.

S. I. Desai, K. C. Dua and *A. Subhashini* for the Appellant.

K. Ray, J. Ramamurthy and *D. N. Gupta* for the Respondent.

The Judgment of the Court was delivered by

DESAI, J. The Revenue in this appeal by certificate questions the correctness of the judgment of the Calcutta High Court in Income Tax Reference No. 138 of 1967 in which the Income Tax Appellate Tribunal, Calcutta Bench 'A', referred the following question to the High Court for its opinion :

> "Whether on the facts and in the circumstances of the case, the assessee could be said to have paid income-tax in U. K. by deduction or otherwise in respect of the net dividends of Rs. 15,266 so as to be eligible for the relief contemplated by section 49D of the Indian Income Tax Act, 1922 ?"

The Respondent assessee is a resident Company carrying on business of general insurance. The Company held shares of U.K. based joint stock companies. The net dividend income in respect of the shares held by it amounted to Rs. 15,266/- after deduction of British Income-tax of Rs. 9881/-, the amount being stated in rupee equivalent of the pound sterling. For the assessment year 1960-61 the relevant previous year being the calendar year 1959, the assessee applied for relief under s. 49D of the Indian Income-tax Act, 1922 (for short 'the Act'). The Income-tax Officer declined to grant the relief but the reasons for the decision were not made explicit. In appeal by the assessee, the Appellate Assistant Commissioner confirmed the decision of the Income-tax Officer observing that even if it be held that the net dividend income suffered U.K. tax by deduction, there is nothing to show that the tax deducted was paid to U.K. Revenue and, therefore, s. 49D is not attracted. In further appeal by the assessee, the Tribunal accepted the contention of the assessee and at the instance of the

A Revenue, referred the question hereinabove set out, to the High Court. The High Court, after an exhaustive examination of the relevant provisions of the Income-tax Act of U.K. and the decisions bearing on the question, confirmed the decision of the Tribunal.

The Assessee claims relief in respect of the income arising outside the taxable territory under s. 49D of the Act. The relevant portion B of s. 49D reads as under :

> "49.D. Relief in respect of incomes accruing or arising outside the taxable territories :—(1) If any person who is C resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories), he has paid in any country, with which there is no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, D he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower.
>
> (2) x x x x
>
> (3) x x x x
>
> E *Explanation*—In this section,—
>
> (i) x x x x
>
> (ii) x x x x
>
> (iii) the expression "rate of tax of the said country" F means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all reliefs due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income assessed in the said country".

G To be eligible for relief under s. 49D read with its explanation, the assessee must establish excluding the non-disputed requirement that : (i) the assessee has income which has accrued or arisen without taxable territory; and (ii) the assessee has paid in any country income-tax by deduction or otherwise under the law in force in that country; and (iii) in that event the assessee would be entitled to the deduction from H Indian income-tax payable by him; (iv) a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is lower. The expression 'rate of tax of the said country' must be given the meaning as set out in para (iii) of the explanation and in doing so the importance of the words 'income assessed in the said country' has to be borne in mind.

There is no controversy that the assessee is a resident company and has dividend income from the U.K. based joint-stock companies, i.e. income accruing without taxable territory. Admittedly, there is no reciprocal arrangement for relief or avoidance of double taxation between India and U.K.

The assessee has received dividend income. A specimen dividend warrant issued in favour of assessee reads as under :

STOCKHOLDERS ARE PARTICULARLY REQUESTED TO NOTIFY THE COMPANY OF ANY CHANGE OF ADDRESS

12125 J. LYONS AND COMPANY LIMITED.

Ordinary & 'A' Ordinary Stock.

Annexed is a warrant in payment of Interim Dividend on your Stock on account of the year ending 31st March 1960.

Gross Dividend of 1s od per 1 unit on—		
£....Ordinary stock.	....	£96 12 0
£1932 'A' Ordinary stock	....	
Less-Income-tax at 7/9d in the £ ..		£37 8 8
	Net Dividend	£ 59 3 4

THE CLIVE INSURANCE CO. LTD.,
CLIVE BUILDINGS,

8, NETAJI SUBHAS ROAD, CALCUTTA.

I hereby certify that income-tax on the profits of the Company, of which profits this dividend forms a portion, has been or will be duly paid to the proper officer for the receipt of taxes. This voucher will be accepted by the Inland Revenue as proof of the deduction of the tax in claiming the exemption from or return of income-tax.

H. E. LOFTHOUSE,

Secretary

1st December, 1959.

Cadby Hall, London, W.14".

The real controversy centres round the question whether deduction of income-tax from dividend as shown in the dividend voucher constitutes payment of income-tax by the assessee by deduction or otherwise in U.K. on his dividend income.

The first submission is that the income in respect of which relief can be claimed under s. 49D must be income actually chargeable to income-tax under the law of the foreign country, the income must be subject to tax, and must hence actually be taxed in the foreign country. Section 49D does postulate that in order to be entitled to relief against double taxation the income which has arisen without the taxable territory must have been charged to income-tax by deduction or otherwise under the law in force in the country in which the income has accrued. It cannot be gainsaid that relief against double taxation can be had in respect of the income which has been taxed once according to law in force in the country in which it has arisen and it is the income of the person who is resident in taxable territory and is liable to be charged to income-tax according to Indian Income-tax Act. In other words, it must be doubly taxed income.

The question which was vigorously debated is whether the dividend income which accrued in U.K. was charged to tax by deduction or otherwise according to the law of Income-tax in force at the relevant time in U.K.

In U.K. there is a slight anomalous position with regard to dividend income. Broadly it is stated that dividend paid out of the profits of the company to shareholders of the company is not chargeable to income-tax in the hands of the assessee. The company pays tax on its profits. If dividend is distributed after tax is paid by the company it is optional with the company not to deduct any income-tax from the dividend paid to shareholders or the company may reimburse itself in respect of the tax paid by it by deducting income-tax at standard rate from the dividends paid to the shareholders, *vide* s. 184, U.K. Income-tax Act, 1952. The dividend income thus received by the shareholders is not chargeable to income-tax but is certainly chargeable to surtax in the hands of the assessee. In view of this legal position, it was strenuously contended that there was no statutory provision for taxing dividend income under the law of U.K. nor was there any machinery prescribed for assessing to income-tax the dividend income accrued to a shareholder. The Company having been charged to tax on its income, the dividend income in the hands of shareholders was not chargeable to income-tax in the hands of shareholders. It was further said that to work out the mechanics of relief to be granted it must be shown that the dividend income in the hands of the assessee must be assessed at some rate of income-tax in U.K. and then comparison can be made with Indian rate of income-tax to grant relief.

Initially the difference that stares in our face in respect of deduction of income-tax from dividends paid by companies under U.K. income-tax law and our Act must be noticed. Under U.K. law the company has to pay tax on its profits or gains as its liability and not as agent of members to whom dividend is distributed out of profits. Therefore, if dividend is distributed after profit or gain of the company is charged to tax, it is optional with the company either to deduct or not to deduct the indome-tax paid by it from the dividend paid to members and if it chooses to exercise the option, it can do so at standard rate. Under s. 18 of our Act, the company has to deduct income-tax and supertax at prescribed rate from the dividend paid to member as agent of the member and all sums so deducted shall for the purpose of computing the income of an assessee, be deemed to be income received *vide* sub s. (4) of s. 18. The dividend income including deduction, that is grossed up income, will be assessed as income of the shareholder and he will be given credit for the amount so deducted by the company and paid over to the authority. It was accordingly pointed out that in U.K. company pays tax under s. 184 on its own liability and reimburses itself to some extent by the tax deducted at standard rate from the dividend paid to shareholder and the deduction so made would not be paid to treasury for and on behalf of the shareholder. Therefore, Mr. Desai submitted that even if income-tax at standard rate is deducted from the dividend paid by the company to the asseseee, the dividend income in the hands of assessee is not assessed and charged to tax, and it could not be said that it is a doubly taxed income as envisaged by s. 49D.

No specific provision was pointed out to us which would show that dividend income in U.K. in the hands of the assessee is exempt from payment of Income-tax. The company is liable to pay income-tax on its profits and gains and s. 184 enables the company to deduct from the dividend paid out of profits, tax at the standard rate for the year in which the amount payable becomes due. Dividends which represent the distribution of a taxed fund are, therefore, styled as franked income so far as concerns any further taxation at the standard rate, i.e. the rate at which deduction has been made. The assumption underlying this position is that the dividend represents the residue of the total income which has already been taxed in the hands of the company, the fiction being that if tax was not paid by the company there would have been a higher dividend and, therefore, the dividend income is already taxed. But this fiction led to a number of complications because the company is an independent juristic person and the scheme of the Income-tax Act in U.K. does not imply that the Company pays tax on behalf of the member. To reconcile this position, way back, Lord Phillimore in *Bradbury* v. *English Sewing Cotton Co. Ltd.*,(1) observed as under :

> "Their taxation would seem to be logical, but it would be destructive of joint stock company enterprise, so the Act of 1842 has, apparently, proceeded on the idea that for revenue purposes a joint stock company should be treated as a large partnership, so that the payment of income tax by a company would discharge the quasi-partners, The reason for their discharge may be the avoidance of double taxation, or to speak accurately, the avoidance of increased taxation. But the law is not founded upon the introduction of some equitable principle as modifying the statute; it is founded upon the provisions of the statute itself; and the statute carries the analogy of a partnership further, for it contemplates a company declaring a dividend on the gross gains, and then on the face of the dividend warrant making a proportionate deduction in respect of the duty, so that the shareholder whose total income is so small that he is exempt from income tax or pays at a lower rate, can get the income tax which has been deducted on the dividend warrant returned to him".

It would appear that company for tax purpose being treated as a large partnership was not merely a fiction resorted to, to reconcile the position of the dividend income in the hands of the shareholder

(1) 8 Tax Cases 481 (House of Lords)

and the juristic personality of the joint stock company, but it was A
traceable in the words of Lord Phillimore, to the statute itself. Mr. Desai, however, contended that this theory of company being treated as a large partnership has been discarded and long since exploded in U.K. itself, and in this connection reliance was placed on *Commissioners of Inland Revenue* v. *Cull,*[1] where Lord Atkin observed as under :

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> "My Lords, it is now clearly established that in the case of a limited company the company itself is chargeable to tax on its profits, and that it pays tax in discharge of its own liability and not as agent for its shareholders. The latter are not chargeable with Income-tax on dividends, and they are not assessed in respect of them. The
> reason presumably is that the amount which is available to C
> be distributed as dividend has already been diminished by tax on the company, and that it is thought inequitable to charge it again. At one time it was thought that the company, in paying tax, paid on behalf of the shareholder : but this theory is now exploded by decisions in this House, and the position of the shareholders as to tax is as I have
> stated it." D

However, in *Canadian Eagle Oil Co. Ltd.* v. *The King,*[2] wherein Lord Macmillan, after observing that this topic has been darkened rather than illumined by a false analogy which it has been sought to draw with the case of the taxation of the income of United King-
dom companies and their shareholders, affirmed the observations E
of Lord Phillimore in *Bradhury's* case (supra) and further observed that this system of treating the company as a large partnership is highly artificial; but it is a domestic expedient limited in its operation to U.K. In *Cenlon Finance Co. Ltd.* v. *Ellwood,*[3] Lord Reid in his speech, after referring to *Bradbury's* case (supra) and two other cases, observed that at one time it was thought that a company pays
tax on behalf of or as agent for its shareholders, and, if that were F
so, the explanation would be obvious, but that idea has long been discarded. But as late as 4th June 1964, the House of Lords in *F. S. Securities Ltd.* v. *Commissioners of Inland Revenue,*[4] has reaffirmed the earlier view which becomes abundantly clear from the speech of Viscount Radcliffe. After quoting the relevant sentence from the speech of Lord Phillimore in *Bradbury's* case (supra), the noble Law Lord observed that this analysis of treating the company
as a large partnership so that payment of income-tax by a company G
would discharge the quasi-partners is now accepted as being correct and it remains essential to the application of the whole system even though the connection between any particular fund of profits and a dividend paid has now become in effect untraceable and the rule

(1) 22 Tax Cases 603 at 636 H

(2) 27 Tax Cases 205.

(3) 40 Tax Cases 176 at 205.

(4) 41 Tax Cases 666.

that the company recoups itself at the standard rate of tax that is current at the date of payment means that company and shareholder do not necessarily equate their respective positions as completely as the theory of the matter would require. Proceeding further, it was observed that if the dividends have borne tax in the hands of the paying company and if they were, therefore, franked income in the hands of the respondent as receiving shareholder, the Revenue could not enter them as receipt in its trading account for the purpose of assessing it to tax on a separate taxable subject, that is the trading profit. It was in terms said that to do so would be to recognise double taxation in its most obvious form. There was some dispute whether this view is the majority view but having seen the opinion of all Law Lords, we have no doubt about this and it is on this basis that the appeal of the appellant was allowed.

It, therefore, appears well established according to the statute law of U.K. and the interpretation put on it by the highest court in that country that the dividends which have borne tax in the hands of the paying company were treated as franked income in the hands of the assessee. In other words, it would mean that the income in the form of dividends has been subjected to tax. It is immaterial whether they were taxed in the hands of the assessee or not but they are deemed to have been taxed in the hands of the assessee in U.K. It would be advantageous to refer Simon's Income Tax, 2nd Edn., Vol. I, p. 307, where it is stated that it is a general principle of the Income Tax Acts in U.K. that as far as possible tax is charged at the point where the income first emerges from the source and this is so even if the person primarily in receipt of the income does not ultimately enjoy it but pays it over or accounts for it to another who is the person beneficially entitled to it. In such cases the person assessed has the right to recoup himself, when making a payment of income to the person entitled thereto, by deducting the tax appropriate to that income, or by crediting himself with the amount when accounting. The author includes dividend income as one such income.

It thus clearly emerges that dividends which are styled as franked income have borne tax at the source and that is why they are not assessable for income-tax in the hands of the shareholder.

Now, if thus the dividends styled as franked income have been charged to income-tax at the source, it would mean that it is the income in respect of which income-tax has been paid by deduction or otherwise in accordance with the law in force in the country in which the income accrued. If it is now charged to tax under the Indian Income-tax Act, it obviously becomes a doubly taxed income and one of the requirements of s. 49D would be satisfied.

It was contended on behalf of the Revenue that s. 49D should be interpreted having regard to the scheme of our Act and in harmony with other relevant provisions, and it should not be interpreted by reference to English statutes not in *pari materia* or decisions of courts in England interpreting those statutes. It was pointed out that the course adopted in England in relation to dividend income has been

A described as anomalous. Undoubtedly, to be entitled to relief under s. 49D, the requirements for eligibility therein prescribed must be satisfied by the assessee. One such requirement is that income in respect of which relief from double taxation is sought, is the income in respect of which he has paid income-tax by deduction or otherwise under the law in force in the country in which the income accrued. B While examining the question whether the assessee has fulfilled this requirement, it will have to be ascertained what is the law bearing on income-tax in the country in which income has arisen and whether according to that law, the said income has suffered tax by deduction or otherwise again according to the law in that country. According to the income-tax law in U.K. dividends represent the distribution of a taxed fund and are, therefore, styled as franked income. The payment of tax by the company and deduction made at standard rate from dividend distributed to shareholders, operates in relief of the shareholders C (*vide Inland Revenue Commissioners* v. *Blott.*(1) Such dividend income according to the law of the country where it has arisen is deemed to have been subjected to tax. Viewed from this angle the dividend income in the hands of shareholder is not charged to income-tax.

D It was, however, said that no relief could be granted to the assessee because in order to work out the mechanics of the relief it would be necessary to ascertain the rate at which the Indian income-tax will be payable on the income in question and the rate of income-tax at which income-tax by deduction or otherwise is paid in the foreign country and then to ascertain which of the two is the lower one which can be allowed as a deduction from the tax payable under the Indian Income-tax Act in respect of such doubly taxed income. The contention is E that in England it being optional with the company to deduct or not to deduct income-tax from the dividend paid by it from its profits after tax is paid by the company, it would be impossible to ascertain the rate at which the tax is paid in the foreign country in respect of such income. Now, the position in U.K. with regard to deduction of income-tax from the dividend distributed from the profits of the company is clear inasmuch as the tax can be deducted only at the standard rate. F The expression 'income assessed in the foreign country' would clearly, in the context in which it is used, mean subjected to tax in the foreign country. In order to ascertain whether the rate under the Indian Income-tax Act or the rate of tax in the foreign country is lower apart from any other consideration, the rate of tax in U.K. in the context of dividend income is easily ascertainable inasmuch as company can deduct income-tax at standard rate only. Undoubtedly, where the assessee G was also liable to pay surtax in U.K. on the dividend income no complication would arise in working out the rate because surtax is payable on dividend income. But in the present case that difficulty does not arise as the assessee being a company, it was neither liable to any surtax nor entitled to any relief in U.K., and, therefore, the rate of tax can be worked out with certainty consistent with the provisions of para (iii) of the Explanation. The assessee thus on the interpretation put H by us in respect of the dividend income has paid tax at the standard

(1) [1921] A.C. 171 at 201.

rate and that is the rate of tax of the foreign country for the purpose of para (iii) of the Explanation.

Mr. Desai submitted that the expressions 'paid', 'by deduction or otherwise' and 'rate of tax of the said country' and the Explanation to s. 49D clearly postulate that relief can be granted under that section only in respect of the tax on income charged, assessed and actually paid by the assessee, to the Revenue of the foreign country. In other words, it was said that the income in the hands of the person who now claims relief against double taxation must be assessed as his income and income-tax must be paid by him to the Revenue of the foreign country or even if it is paid by the company in respect of dividend income it must be shown as agent of the shareholder collecting it on behalf of the shareholder and paying it to the Revenue of the foreign country on behalf of the shareholder. Some of the facets of this submission have already been examined and dealt with by us. The only question is whether the expression 'assessed' in para (iii) of the Explanation could mean assessed in the hands of the shareholder as his income. Once it is accepted that the dividend represents franked income distributed out of profits and gains and not liable to further income-tax in the hands of member, it clearly transpires that for relief against double taxation it is the income which has been subjected to tax in the foreign country in which it has arisen and irrespective of the fact that there is no provision comparable to s. 18(5) of our Act in the Income-tax Act of U.K. yet the payment of tax by the company operates in relief of the shareholder and on that account alone the dividend income is not chargeable to tax in U.K. Therefore, it can be said with reasonable certainty that in respect of the dividend income of the assessee income-tax has been paid by deduction or otherwise under the law in force in the country in which income has arisen. The principle of agency in payment by the company is worked out on the basis of company being treated as a large partnership so that its payment of tax is on behalf of quasi-partners.

Thus, it clearly transpires that all the requirements of s. 49D read with the Explanation have been satisfactorily established by the assessee and, therefore, the High Court rightly answered the question in the affirmative in favour of the assessee.

Before we conclude, it may be pointed out that the Bombay High Court in *Commissioner of Income-tax* v. *Tata Sons Pvt. Ltd.*,(1) and the Gujarat High Court in *Commissioner of Income-tax* v. *Cotton Fabrics Ltd.*,(2) have in terms followed the decision of the Calcutta High Court under appeal.

This appeal accordingly fails and is dismissed with costs.

S.R. *Appeal dismissed.*

(1) [1974] 97 ITR 128.
(2) [1976] 104 ITR 233.