

PETITIONER:
RAMPUR DISTILLERY AND CHEMICALS CO. LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, LUCKNOW

DATE OF JUDGMENT 21/11/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
RANGNATHAN, S.

CITATION:
1991 AIR 1166 1990 SCR Supl. (3) 320
1992 SCC Supl. (1) 67 JT 1991 (1) 157
1990 SCALE (2) 1105

ACT:
Indian Income Tax Act, 1922--Section 16(2)--Declared dividend --When assessable to tax.

HEADNOTE:

The appellant was a limited company running a distillery, and getting income from a sugar company. The sugar company at an extraordinary general meeting held on January 16, 1952, resolved by a resolution that a dividend be declared out of the profits transferred to the Reserve Fund and, by a subsequent resolution, empowered the Board of Trustees to distribute them among its shareholders whose names appeared on the register of the company on the said date.

On the same day, the Board of Directors of the Sugar Company transferred their holdings of the shares of the cement company to trustees under trust.

Due to the objections raised by some of the shareholders by filing a company application in the High Court and due to the order of injunction issued therein the payment of dividend in specie could not be distributed. Ultimately the High Court upheld the validity of the aforesaid two resolutions and in terms thereof payments were made on January 16, 1952.

The assessee company having received the dividend on January 18, 1957, initially included the dividend income in the assessment year 1957-58, but thereafter filed a revised assessment deleting the said amount and claiming that the same was to be includable in the assessment year 1952-53, and not in the year 1957-58.

The Income Tax Officer included the said income in the assessment year 1957-58 and the Appellate Assistant Commissioner upheld the same by dismissing the appeal of the assessee.

On further appeal, the Tribunal held that the sugar company irrevocably placed the shares of the cement company with the trustees for being distributed to the shareholders as dividend in specie and that

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since the dividend had been declared on January 16, 1952 and was unconditionally available to the assessee on that date it was an amount which fell to be taxed in the assessment

year 1952-53 and not in the assessment year in which it had been assessed.

The High Court, in the reference made to it, held that the shares were not unconditionally available for distribution to the share holders, and that actual transfer did not take place in the relevant accounting year, but in a subsequent year viz. January 18, 1957, was liable to assessment in the assessment year 1957-58, and answered the question in favour of the Revenue and against the assessee.

In the appeal by the assessee to this Court on the question, whether the income from the dividend was liable to be taxed in the assessment year 1957-58.

Allowing the appeal;

HELD: 1. If the dividend declared by a company was unconditionally available to the assessee to be paid, it is taxable only in the year in which it is paid, credited or distributed or is deemed to be paid, credited or distributed. [327A-B]

2. Generally the dividend would be said to have been paid within the meaning of Section 16(2) of the Income-Tax Act, when the company discharges its liability and makes the amount of dividend unconditionally available to the members entitled thereto. The Legislature had not made the dividend income taxable in the year in which it became due by express words of the statute. It was taxable only in the year in which it was paid, credited or distributed or was deemed to the paid, credited or distributed. [327C-D]

3. The High Court committed a clear error in holding that the amount in question is includable in the assessment year 1957-58. [328D]

4. In the instant case, the sugar company had irrevocably placed the shares of the cement company with the trustees for being distributed to the share-holders as a dividend on 16.1.1952. It has also authorised the trustees to distribute to the share-holders by issuing negotiable certificates which have been made ready. But for the order of injunction issued by the High Court at the behest of some of the share-holders the Board of Trustees would have carried out the formal handing over the dividend in specie to the respective share-holders. Since the injunc-

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their

servants from distributing the dividend to the share-holders, they could not complete the distribution thereof. [327D-F]

5. The action of the sugar company to show in their balance sheet the declared dividend as the asset, does not have the effect of recalling the valid resolution already passed making available unconditionally the dividend for distribution to the share-holders as part of its trading activity. [328B-C]

6. As the dividend was unconditionally available to the members entitled thereto on 16.1.1952 in specie; the company must be deemed to have paid, credited or distributed to its share-holders of the sugar company, and the dividend income of the assessee fell to be taxed, in the assessment year 1952-53 and not in the assessment year 1957-58. [327F, 328D-E]

J. Dalmia v. Commissioner of Income-tax, [1964] 7 SCR 579, followed.

Padmavati R. Saraiya and Ors. v. Commissioner of Income-Tax, Bombay City-I, [1965] 1 SCR 307; Punjab Distilling Industries Ltd. v. Commissioner of Income-Tax, Punjab, [1965] 3 SCR 1; Commissioner of Income-tax (Central), Cal-

cutta v. Bikaner Trading Co. Ltd., [1970] 78 ITR 12, referred to.

Commissioner of Income-tax v. Bharat General Reinsurance Co. Ltd., [1971] 81 ITR 303, approved.

JUDGMENT:

JUDIS