(1997) 12 SC CK 0150

Supreme Court of India

Case No: Civil Appeal No. 649 of 1987 (From the judgment and order dt. 3rd July, 1984 of the Madras High Court in Tax Case No. 1258 of 1979 reported as CIT vs. P. Sarada (1985) 154 ITR 387 (Mad)

MISS P. SARADA		APPELLANT
	Vs	
COMMISSIONER OF INCOME TAX.		RESPONDENT

Date of Decision: Dec. 9, 1997

Acts Referred:

- Income Tax Act, 1961 - Section 2, 256

Citation: (1998) 144 CTR 209 : (1998) 96 TAXMAN 11

Hon'ble Judges: Suhas C. Sen, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

SUHAS C. SEN, J. :

The appellant, Miss P. Sarada, is a major shareholder of M/s Universal Radiators (P) Ltd. (hereinafter referred to as "the company"). It is a company in which public were not substantially interested. While completing the assessment of the appellant for the asst. yr. 1973-74, the ITO found that during the period 3rd July, 1972 to 22nd March, 1973 she had withdrawn a total sum of Rs. 93,027 from the company. The appellant had a running account with the company. At the material time she did not have any credit balance in her account with the company. This excess withdrawal was treated by the ITO as deemed dividend under s. 2(22)(e) of the IT Act on two grounds : (1) The assessee had no credit balance in her accounts with the said company at the material time; and (2) that there was sufficient accumulated profits of the company from which the excess withdrawal was made by the assessee. The ITO included this amount of Rs. 93,027 in the computation of the appellants income. The assessees appeal to the AAC was dismissed. However, on further appeal, the Tribunal upheld the case of the assessee.

2. The Tribunal held that the withdrawals made by the appellant will have to be taken as paid out of the money lying to the credit of another shareholder Shri A. C. Mahesh and not out of the accumulated profits of the company. A letter dt. 3rd April, 1972 written by Shri A. P. Madhavan, the father of the minor Mahesh, was relied upon by the Tribunal. In that letter Madhavan had directed the company to make available to the assessee Miss P. Sarada a sum of Rs. 1 lakh from out of his account. The Tribunal found that Mahesh owed some money to the assessee and as Mahesh had directed repayments of the amount due to the assessee from out of his credit balance in the company, the withdrawals made by the assessee had to be treated as withdrawals from the account of Mahesh and not from the accumulated profits of the company.

3. At the instance of the CIT, the following question of law was referred to the High Court under s. 256(1) of the IT Act.

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the withdrawals made by the assessee from M/s Universal Radiators (P) Ltd. totalling Rs. 93,027 cannot be assessed under s. 2(22)(e) of the IT Act, 1961 for the year 1973-74."

The High Court answered the question in the negative and in favour of the Revenue.

The High Court took note of the fact that the accounting period for the relevant asst. yr. 1973-74 was 1st April, 1972 to 31st March, 1973. The assessee was a substantial shareholder of the company and was drawing funds from the company till 22nd March, 1973. As a result of various withdrawals made by the assessee, her credit balance had been entirely wiped out and in fact her account with the company showed excess withdrawal of a sum of Rs. 1,831.14 as on 22nd March, 1973. In spite of this debit balance the assessee between 3rd July, 1972 to 22nd March, 1973 on fourteen different dates withdrew a total a sum of Rs. 93,027. The particulars of the withdrawals are as under :

	Rs.
"03-07-1972	1,831.14 (Excess withdrawal)
03-08-1972	5,000.00
02-09-1972	5,000.00
12-09-1972	7,998.00
03-10-1972	5,000.00

03-11-1972	5,000.00
01-12-1972	5,000.00
11-12-1972	7,998.00
18-12-1972	4,749.00
18-12-1972	8,522.00
02-01-1973	5,000.00
03-02-1973	5,000.00
05-03-1973	5,000.00
09-03-1973	7,999.00
17-03-1973	10,000.00
22-03-1973	3,930.00
	93,027.00"

4. According to the assessee, the withdrawals had not been made from the companys account but from the amount standing to the credit of Mahesh in the books of the company. The High Court pointed out that the alleged letter dt. 3rd April, 1972 was given effect to by the company only on 31st March, 1973 by debiting a sum of Rs. 1 lakh from the account of Mahesh and crediting it to the account of the assessee. But the assessee had steadily and regularly withdrawn monies from the company between 3rd July, 1972 to 22nd March, 1973. These withdrawals were not made by debiting the credit balance of Mahesh which remained intact till 31st March, 1973. The High Court concluded that the various withdrawals made by the assessee were from the companys accumulated profits.

5. We do not find any fault with the reasoning of the High Court.

Sec. 2(22)(e) as it stood at the material time defined dividend to include "any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to a shareholder, being a person who has a substantial interest in the company .... to the extent to which the company ..... possesses accumulated profits". In the instant case there is no dispute that the appellant had a substantial interest in the company. The nature of the company is also not in dispute.

From the facts as stated hereinabove, it appears that the withdrawals made by the appellant from the company amounted to grant of loan or advance by the company to the

shareholder. The legal fiction came into play as soon as the monies were paid by the company to the appellant. The assessee must be deemed to have received dividends on the dates on which she withdrew the aforesaid amounts of money from the company. The loan or advance taken from the company may have been ultimately repaid or adjusted but that will not alter the fact that the assessee, in the eye of law, had received dividend from the company during the relevant accounting period.

6. It was held by this Court in the case of 287117) that the statutory fiction created by s. 2(6A)(e) of the Indian IT Act, 1922 would come into operation at the time of the payment of advance or loan to a shareholder by the company. The legislature had deliberately not made the subsistence of the loan or advance, or its remaining outstanding, on the last date of the previous year relevant to the assessment year a pre-requisite for raising the statutory fiction.

7. In the instant case, excess withdrawals were made by the assessee on various dates between 3rd July, 1972 to 22nd March, 1973 when the account of Mahesh had not been debited. The assessees account was consequently overdrawn. On the very last day of accounting year some adjustment was made but that will not alter the position that the assessee had drawn a total amount of Rs. 93,027 between 3rd July, 1972 to 22nd March, 1973 from the company when her account with the company did not have any credit balance at all. That means these advances made by the company to the assessee will have to be treated as deemed dividends paid on the dates when the withdrawals were allowed to be made. Subsequent adjustment of the account made on the very last day of the accounting year will not alter the position that the assessee had received notional dividends on the various dates when she withdrew the aforesaid amounts from the company.

8. A point was taken that the High Court has reappraised the fact and has disbelieved the letter dt. 3rd April, 1972 which was accepted as genuine by the Tribunal. It was contended that it was not open to the High Court to doubt this letter.

This argument is misconceived. The High Court has proceeded on the basis of the facts found by the Tribunal. There is no dispute that the assessee had withdrawn various sums of money between 3rd July, 1972 and 22nd March, 1973 when she did not have any credit balance with the company. In order to pay her these sums of money the account of Mahesh was not debited at all. The entire credit balance of Mahesh stood as it was till the very last day of the accounting year. On these facts found by the Tribunal, the High Court concluded that it was not possible to hold that the assessee was paid money out of the funds lying to the credit of Mahesh. The High Court decided the case entirely on the basis of the facts found by the Tribunal.

We find no merit in this appeal. The appeal is dismissed with no order as to costs.