

(1989) 12 CAL CK 0004

Calcutta High Court

Case No: IT Reference No. 308 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Jai Hind Investment Industries
(P.) Ltd.

RESPONDENT

Date of Decision: Dec. 12, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 195, 198, 199, 2, 256

Citation: (1992) 62 TAXMAN 361

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Division Bench

Advocate: B.K. Naha, for the Appellant; J.P. Khaitan, for the Respondent

Judgement

Suhas Chandra Sen, J.

The Tribunal has referred the following three questions of law to this Court u/s 256 of the income tax Act, 1961 ("the Act"):

1. Whether, on the facts and in the circumstances of the case the sum of Rs. 60,432 should be assessed as business income of the assessee ?
2. Whether, on the facts and in the circumstances of the case, sum of Rs. 60,432 was dividend income of the assessee u/s 2 of the income tax Act, 1961 ?
3. If the answer to question No. 2 is in the affirmative then whether on the facts and in the circumstances of the case the assessee was entitled to relief u/s 80M of income tax Act, 1961 in respect of the sum of Rs. 6,04,320 ?

The assessment year involved is 1974-75 for which the relevant accounting period is the year ended 31-3-1974. The facts of this case, as found by the Tribunal, are as follows:

The assessee-company had purchased 20, 144 shares of the Punjab National Bank Ltd., on 2-1-1974 at Rs. 37 per share. The cost price of the shares amounted to Rs. 7,45,320. In the meanwhile, however, the Punjab National Bank Ltd. was nationalised by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Thereafter the Bank decided to undertake other types of activities like financing and setting up of joint ventures. In this connection, an assurance was given to the members that in case the company proposed to carry on any other business other than banking, an option would be given to these members who did not wish to continue as such to receive cash on their entire shareholdings in the company on surrendering such shares to the company. The assessee being one of the shareholders of the said Bank to the extent of 20, 144 shares purchased by it on 2-1-1974, exercised the option to sell to the Punjab National Bank Ltd. its shares at Rs. 40 per share. Since the shares in question were purchased by the assessee-company for Rs. 7,45,328 there was a profit in this transaction. The Punjab National Bank Ltd. purchased the shares from the assessee company as well as from other shareholders pursuant to the scheme of reduction of capital of the company from Rs. 2 crores to Rs. 80,12,685 in terms of resolution passed in the Annual General Meeting of the shareholders held on 25-9-1973. The confirmation of the Delhi High Court was also received in this behalf. The face value of one share was Rs. 10. The purchase consideration of the shareholders who had exercised the option to sell their shares to the Punjab National Bank Ltd. at Rs. 40 per share was paid from the general reserve of the Punjab National Bank Ltd. The assessee claimed the excess realisation over the face value of shares of Rs. 10 each in the nature of dividend as per the definition of dividend u/s 2 of the Act. It was, therefore, claimed that out of the total realisation of Rs. 8,05,760 a sum of Rs. 6,04,320 being the realisation over the face value of the shares was in the nature of distribution by the company of its accumulated profits of reduction of the capital and, thus, constituted dividend within the meaning of section 2. It was also claimed that dividend income of Rs. 6,04,320 entitled the assessee-company to relief u/s 80M of the Act, the ITO however, did not allow the claim.

The assessee, thereafter, filed an appeal to the AAC, who held that the assessee was entitled to relief u/s 80M because even the deemed dividends were dividends within the meaning of section 2. The AAC while deciding the appeal of the assessee placed reliance on the circular issued by the Commissioner, Delhi vide CIT/Tech/M-14(57)/62-73/23854, dated 19-1-1975. Against this order of the AAC the revenue filed an appeal to the Tribunal.

The Tribunal after examining the position in law came to the conclusion that the AAC was justified in holding that the deemed dividends u/s 2 were also dividends for the purposes of allowing relief u/s 80M. The Tribunal, therefore, dismissed the departmental appeal.

2. The first contention raised on behalf of the revenue is that the computation of the dividend income was wrong. My attention was drawn to section 2 and it was argued that the distribution from the company could not be treated as dividend. The payment by the company to the extent of the face value of the shares must be treated as return of capital. It has been further argued on behalf of the revenue that the assessee did not pay the face value but something extra for the acquisition of the shares. The shares were purchased not at par but at a premium from the market. If that be the case, the cost of acquisition of the shares must be deducted for the purpose of arriving at the surplus which alone can be regarded as the dividend income which qualified for relief u/s 80M.

Lastly, Mr. Naha, on behalf of the revenue, has drawn my attention to the order of the ITO from which it appears that the assessee has debited his business account with the purchase price of the shares and had claimed a loss of Rs. 5,43,888 being the difference between the purchase price and the face value of 20, 144 shares. Mr. Naha has contended that the assessee tried to obtain double benefit. He has debited the purchase price in his trading account of share-dealing and once again had deducted the face value of the shares from the dividend income.

The ITO held:

The assessee-company purchased 20, 144 shares of the Punjab National Bank on 2nd January, 1974 at the rate of Rs. 37 per share. The cost price of the shares amounted to Rs. 7,45,328. But the shares were sold to the Punjab National Bank in exchange of a consideration of Rs. 40 per share amounting to Rs. 8,05,760. Thus, the assessee earned a profit of Rs. 60,432. Total receipt for surrender of shares by the assessee-company on reduction of capital by Punjab National Bank is Rs. 8,05,760 out of which a sum of Rs. 1,38,993/60 p. has been retained by Punjab National Bank Ltd., for tax deducted at source liability. The face value of 20, 144 shares at the rate of Rs. 10 each amounted to Rs. 2,01,440. The difference between Rs. 9,03,760 and Rs. 2,01,440 is Rs. 6,04,320 which has been shown by the assessee as dividend income. Similarly in the share dealing a/c the assessee has claimed a loss of Rs. 5,43,888 being the difference between the purchase price and face value of 20, 144 shares. Besides the net profit of Rs. 60,432 the assessee also earned interest of Rs. 16,115 from the Punjab National Bank out of which a sum of Rs. 3,384 was deducted at source on account of income tax. The assessee has simultaneously claimed loss of Rs. 5,43, 888 in share dealing a/c and profit of Rs. 6,04,320 as dividend income. Thus instead of showing net income of Rs. 60,432 in share dealing a/c, the assessee had made the above two types of entries in the book of a/c as the assessee is not quite sure about the nature of income.

3. I have carefully considered the arguments of both the sides and I am of the view that the Tribunal fell into an error in disposing of the case in the manner it did. The expenditure incurred for the purposes of acquisition of shares cannot be treated as expenditure for the purpose of earning dividend income. Even if a person buys

shares for the purpose of getting dividend year after year, the price for acquisition of the shares will be capital expenditure. Section 56 of the Act makes it clear that the dividend must be computed under the head "Income from other sources". Therefore, even if a share dealer obtains dividend, it will be assessed as income from other sources. The loss or gain from share-dealing will, however, be computed as business loss or business gain, as the case may be. Section 57 of the Act lays down that income chargeable on computation of income from other sources includes dividend income. Section 57 specifically allows deduction for any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend on behalf of the assessee. Section 57 does not relate to dividend income. Section 57 lays down that any other expenditure not being in the nature of capital laid out or expended wholly and exclusively for the purpose of making or earning such income is to be excluded from the income from other sources. This, of course, will not include any capital expenditure. This will also not include purchase price of the shares which will be in the business account of share-dealing. Shares are to be treated as stock-in-trade of a share-dealer and the purchase price is a part of the circulating capital of the share-dealer.

4. In the instant case, the assessee has purchased the shares. The expenditures incurred for the purpose of acquisition of shares have been debited in the share-dealing account and are not allowable as deduction u/s 57. If a person acquires shares whether as an investor or as a dealer, the price paid for acquisition of the shares cannot be deducted from the dividend income. When the assessee sells the shares then excess realisation made may amount to capital gain or business profit depending upon the nature of the share-holding. Similarly, if any loss is suffered as a result of the sale of the shares, the loss would be either capital loss or business loss depending upon the nature of holding of the shares.

5. There is no dispute that in this case the assessee was a dealer in shares and the shares were held as stock-in-trade. Therefore, the buying and selling of shares will have to be shown in the assessee's share-dealing account. This is precisely what the assessee himself has done as was noted by the ITO. The purchase price of the shares will be expenditure incurred and allowable in computation of business income of the assessee.

6. If a person purchases a share, he acquired a bundle of rights. The share-holding does not give a person only the right to get dividend as and when declared but also various other rights including the right to vote at the meeting of the company and also the right to participate in the surplus, if any, in case a company goes into liquidation. There are also many other rights attached to a share.

7. If it is the case of any person that shares were bought exclusively for the purpose of getting dividend year after year and for no other purpose, then the expenditure will be capital expenditure.

But in the instant case, the finding is that the assessee was a dealer in shares. The shares were purchased in course of share- dealing. If that be the case, the purchase price will have to be debited in the business account and will have to be set off against the business profits, if any, made by the assessee. If there is no business profit, then the amount will have to be treated as business loss and carried forward or set off against other heads of income in accordance with law.

8. Section 2 is as under:

2(22)(d). dividend includes--

(a) to (c)*****

(d) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not;

This sub-section contemplates that the entire amount of distribution to its shareholder by a company to the extent the company possesses accumulated profits after a certain date will be treated as dividend. Therefore, the entire amount paid by the company to its shareholder will have to be treated as dividend. I fail to see how the face value of the shares cannot be deducted from such payment of dividend. When a shareholder receives dividend from a company, the face value of the share is not deducted. If the amount which has been paid by the company is to be treated as dividend, then there is no scope for deduction of face value of the shares from such dividend.

9. The assessee will be entitled to credit for tax deduction only if the tax has been deducted in accordance with law and also paid to the Central Government. Both the conditions must be fulfilled for getting the credit for tax deducted at source. Section 198 of the Act, however, lays down that all sums deducted in accordance with, inter alia, section 195 of the Act which deals with dividend income, shall be deemed to be income received.

There is no clear finding of the Tribunal on this aspect of the matter. It is not clear whether the company has informed the shareholder by issuing a certificate that tax has been deducted at source or not at all.

The Tribunal will have to investigate this aspect of the matter and decide in accordance with the provisions of sections 198 and 199.

10. The revenue has not seriously contested the proposition that once the payment is treated as dividend income, the benefit of section 80M cannot be denied to the assessee.

11. We, therefore, answer the three questions by saying:

(1) The entire amount received by the assessee from the company must be treated as dividend income without any deduction of the face value of the shares or the purchase price of the shares.

(2) The purchase price of the shares must be treated as business expenditure as the assessee had done in his share-trading account and such expenditure should be allowed as deduction in the share-trading account under the business head.

(3) The assessee will be entitled to relief u/s 80M in respect of the amount of dividend received from the company as the shareholder on the reduction of the company's capital. The relief will be calculated on the net amount of dividend which has been included in the gross total income of the assessee.

The Tribunal will dispose of the case conformably with the answer given.

The case is disposed of finally as above. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

I agree.