

(2008) 03 BOM CK 0117

Bombay High Court

Case No: Income Tax Appeal (L) No. 2214 of 2006

The Commissioner of Income
Tax

APPELLANT

Vs

Aatur Holdings Pvt. Ltd.

RESPONDENT

Date of Decision: March 12, 2008

Acts Referred:

- Companies Act, 1956 - Section 114, 206
- Securities Contracts (Regulation) Act, 1956 - Section 27, 27(1), 27(2)

Citation: (2008) 110 BOMLR 1143 : (2008) 146 CompCas 152 : (2008) 219 CTR 251 : (2008) 302 ITR 92

Hon'ble Judges: R.S. Mohite, J; F.I. Rebello, J

Bench: Division Bench

Advocate: P.S. Sahadevan, for the Appellant; A.K. Jasani, for the Respondent

Final Decision: Dismissed

Judgement

F.I. Rebello, J.

The revenue has preferred this appeal on the following questions:

- Whether on facts and in the circumstances of the case and in law, the ITAT was right in law in holding that the de jure owner of the shares alone is entitled to the dividend declared by a company, though the assessee company might be defacto owner of shares but had no right to receive the dividend from the company unless it is the registered shareholder of the company
- Whether on facts and in circumstances of the case, the ITAT was right in law in holding that the dividend of Rs.16,84,150/-has not accrued to the assessee and thereby holding that such dividend income could not form part of the total income of the assessee

iii) Whether on facts and circumstances of the case, the ITAT was right in law, in accepting the assessee's submission, that even though the amounts were paid for acquiring the shares, shares have not been delivered to the assessee company and the change in ownership of the shares have not been registered and notified and therefore the assessee's name did not appear in the share registers of the respective companies on the record date and therefore, it could not have received the dividend at all

2. This appeal is in respect of A.Y.1994-95. Against the order of the A.O. the assessee preferred an appeal before the CIT (Appeals) Central-IV, Mumbai. By order dated 21.3.2002 the appeal preferred by the assessee was partly allowed. One of the issue was the addition of an amount of Rs.16,84,150/-on account of dividend income. The shares belonged to a notified person and were/are in the custody of the Special Court. Some of the shares, it appears, had not been received by the notified party. The learned Commissioner (Appeals) came to the conclusion that if shares are not registered in the name of the notified party, the dividend income on such shares has to be received by the registered shareholders only.

Revenue aggrieved by the order of the Commissioner (Appeals), preferred an appeal before the ITAT. On the issue of taxability of the dividend in the hands of the assessee, the learned Tribunal relied on orders of co-ordinate benches, which had taken a view that such dividend in the hands of the owners which are not registered in his name in the books of the company could not be assessed as income in hands of the assessee and accordingly dismissed the appeal. It is this order which is subject matter of the present appeal.

3. On behalf of the revenue, it is submitted by the learned Counsel that as the assessee has paid the consideration, for all purposes they are the owners of the shares and consequently the dividend ought to be assessed in the hands of such a person. On the other hand on behalf of the assessee, it is submitted that the shares are not registered in their name in the books of the company and the dividend has been paid to the person in whose name the shares were registered. It is therefore, submitted that this cannot be income in the hands of the assessee and consequently no fault can be found with the orders of either ITAT or the Commissioner (Appeals)

4. To consider the contention, we shall first refer to the provisions of Section 206 of the Indian Companies Act. The relevant portion of which reads as under:

206. (1) No dividend shall be paid by a company in respect of any share therein, except

(a) to the registered holder of such share or to his order or to his bankers ; or

(b) in case a share warrant has been issued in respect of the share in pursuance of Section 114, to the bearer of such warrant or to his bankers.

A perusal therefore, of the said section would mandate that the dividend must be paid to the registered holder of such share or to his order or to his bankers.

5. Similarly, u/s 27 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "Security Contract Act") the relevant provision is Section 27(1), which reads as under:

27(1) It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

It is thus provided that the person in whose name the securities appear in the books of the company issuing the said securities, is entitled to receive and retain any dividend declared by the company, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged all the documents which must be required by the company for the registration. In the event this has been done, then Section 27(2)(b) reserves the right of such a transferee to enforce against the transferor or any other person his right, if any, in relation to the transfer where the company has refused to register the transfer of the security in the name of the transferee. It is thus clear that under this provision also it is the registered shareholder alone who would be entitled to receive the dividend subject to the limitation as set out u/s 27(1) and 27(2)

6. Learned Counsel for the assessee has also drawn our attention to the Accounting Standard (AS) 9 to contend that once there be an accounting standard as noted by the Supreme Court in [Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad](#), in the absence of any other statutory provision the accountancy standard should be accepted. In the instant case in so far as revenue arising from dividend income is concerned, the accounting standard sets out as under:

13. Revenue arising from the use by others of enterprise resources yielding interest, royalties and dividends should only be recognised when no significant uncertainty as to measurability or collectability exists. These revenues are recognised on the following bases:

- (i) Interest : on a time proportion basis taking into account the amount outstanding and the rate applicable.
- (ii) Royalties : on an accrual basis in accordance with the terms of the relevant agreement.

(iii) Dividends from : when the owner's right investments in to receive payment is shares established.

Nothing has been brought to our attention to show that under the provisions of the Companies Act and the provisions of the Securities Contract Act that there is any other standard or statutory rules under the Income Tax Act by which such dividend can be taxed in the hands of the assessee.

7. The other aspect of the matter which needs to be considered is that the burden of proving that an amount was taxable because it was received in the year of account lies upon the department. This proposition has been reiterated in CIT v. Bikaner Trading Co. Ltd., (1970) 78 ITR 12 (SC) . Income of the assessee has to be received by the assessee as income tax is levied on income. For this purpose we may refer judgment of the Supreme Court in [Commissioner of Income Tax, Bombay City I Vs. Shoorji Vallabhdas and Co.](#), which was reiterated in [Godhra Electricity Co. Ltd., Ahmedabad Vs. Commissioner of Income Tax, Gujarat-II, Ahmedabad](#), . The Supreme Court summed up the law as under:

income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz. the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a hypothetical income, which does not materialise.

8. It is thus clear that merely because a person may have purchased or in receipt of shares, in the absence of the share being registered in his name in the books of account of the company, such a person is not entitled to receive the dividend. The dividend has to be paid by the company in the name of the registered shareholders and it is the registered shareholders alone who can claim the dividend u/s 27 of the Securities Contract Act. On the facts on record, the A.O. in respect of the shares as reflected in the balance-sheet has shown it under four heads:

(a) Non delivered shares ;

(b) Shares handed over to the Custodian but remaining to be registered ;

(c) Shares forming a part of Shri Harshad S. Mehta's affidavit in the case of Benami shares ;

(d) Shares which are lost or stolen.

The A.O. has further set out that in respect of all these categories the ownership of the assessee has not been recognised by any person or any authority. The A.O. has recorded finding that dividend income has not been received by the Custodian in respect of the shares referred to above. The dividend also has been received by some other person. There is also nothing brought on record to indicate that the assessee in terms of Section 27(1) of the Securities Contract Act has lodged the

shares for transfer.

9. Considering these circumstances, in our opinion, we find no reason to interfere with the findings recorded by the Commissioner (Appeals) and as confirmed by the CIT. The questions of law therefore, as raised would not arise and consequently, appeal dismissed.