

A COMMISSIONER OF INCOME TAX, WEST BENGAL.

v.

KAMAL BEHARI LAL SINGHA ETC.

August 16, 1971

B [K. S. HEGDE AND A. N. GROVER, JJ.]

Income Tax—Capital or Revenue—Tests for determining—Dividend paid by company out of accumulated capital gains received by company in the shape of Salamis and Land Acquisition Compensation—Since share holders took a share of the capital asset in which they were beneficially interested, receipt is capital receipt.

C During the relevant accounting year the respondents—assessee received a certain amount as dividend from a company. A part of the amount was paid out of the accumulated capital gains received by the company in the shape of *Salamis* and land acquisition compensation. Such capital gains were taken to the reserve fund and thereafter distributed as dividend. On the question of the taxability of that share of the dividend paid out of the capital gains in the hands of the company the Income-tax Officer held the same was taxable as “dividend.” The Appellate Assistant Commissioner held that the amount could not be considered as “dividend” within the meaning of section 2(6A) of the Income-tax Act, 1922, but the same was taxable as income in the hands of the assessee. The Tribunal confirmed the order of the Appellate Assistant Commissioner. The High Court on reference answered in favour of the assessee.

Dismissing the appeals,

F **HELD:** It is well-settled that in order to find out whether a receipt is a capital receipt or revenue receipt, it has to be seen what it is in the hands of the receiver and not its nature in the hands of the payer. In other words, the nature of the receipt is determined entirely by its character in the hands of the receiver and the source from which the payment is made has no bearing on the question. [417 G]

G The assessee who were share-holders in the company were beneficially entitled to the capital of the company. The amount in question was not something earned by the company in the course of its business. Undoubtedly it was a capital receipt in the hands of the company but that by itself is not sufficient. It has to be seen whether it was a capital receipt in the hands of the assessee. Since the assessee had a beneficial interest in the sum when it was in the hands of the company, when that sum was distributed amongst the share-holders of the company, each of the share-holders took a share of the capital asset in which they were beneficially entitled. That being so, the receipt in the present case must also be considered as capital receipt. The fact that those sums were distributed as “dividends” does not change the true nature of the receipt. [229 D-G]

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Commissioner of Income-tax, West Bengal v. Nalin Behari Lall Singha, 74 I.T.R. 749 and *Trustees of the will of H.K. Brodie (Deceased) v. Commissioner of Inland Revenue*, 17 T.C. 432, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1667 to 1673 to 1968.

Appeals from the judgment and order dated August 30, 1967 of the Calcutta High Court in Income-tax Reference Nos. 3, 6, 7, 8, 9, 10 and 11 of 1964.

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B. D. Sharma, for the appellant (in all the appeals).

Sukumar Ghose and Swapna Ghosh, for the appellant (in all the appeals),

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The Judgment of the Court was delivered by

Hegde, J. Two questions of law which arise for decision in these appeals are:

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“(1) Whether on the facts and in the circumstances of the case of Tribunal was right in holding that the distribution to the assessee of the amount attributable to land acquisition compensation received by the Ukhara Estate Zamindaries Ltd. after 31st March, 1948 was in the hands of the assessee, receipt of dividend within the meaning of Section 2(A) of the Indian Income-tax Act, 1922 ?

E

(2) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the receipt by the assessee of the amount attributable to selamis realised by the Ukhara Estate Zamindaries Ltd., for grant of long-term leases after 31st March, 1948 was a receipt of income of the assessee and taxable as the income of the assessee from other sources ?”

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On both these questions the decision of the authorities under the Indian Income-tax Act, 1922 (in brief the Act) as well as that of the Tribunal was against the assessees. But disagreeing with the view taken by these authorities the High Court answered both these questions in favour of the assessees. The Commissioner of Income-tax, West Bengal aggrieved by this decisions has brought these appeals to this Court on the strength of the certificates given by the High Court.

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A As facts in each of these appeals are more or less similar, it is sufficient if we set out the facts in the case of Kamal Behari Lal Singha, for the assessment year 1950-51, the corresponding accounting year being 1356 B. S. ending on April 13, 1950. It is said that Kamal Behari Lal Singha, who will hereinafter be referred to as the assessee was a shareholder in the Ukhara Estate Zamindaries Ltd. (to be hereinafter referred to as the "company"). During the relevant accounting year, the assessee received a sum of Rs. 13,200 as dividend from the said company. The said dividend was declared on October 19, 1949. Out of that amount a sum of Rs. 8,829 was paid out of the accumulated capital gains, received by the company in the shape of Selamis and land acquisition compensation receipts after March 31, 1948. Such capital gains were taken to the reserve fund and thereafter distributed as dividends. The remainder of the dividends was paid out of the balance of the profit and loss account. In these appeals the dispute centres round the taxability of that share of the dividend which has been paid out of the capital gains in the hands of the company. The Income-tax Officer came to the conclusion that no dividend distributed can be considered as having been paid out of the "capital gains" of the company, therefore the same is taxable as "dividend". In appeal the Appellate Assistant Commissioner accepted the contention of the assessee that the receipt of Rs. 8,829 cannot be considered as dividend within the meaning of s.2 (6A) of the Act but he held that the same is taxable as income in the hands of the assessee. The Tribunal confirmed the order of the Appellate Assistant Commissioner.

It is now well settled that in order to find out whether a receipt is a capital receipt or a Revenue receipt one has to see what it is in the hands of the receiver and not its nature in the hands of the payer. In other words, the nature of receipt is determined entirely by its character in the hands of the receiver and the source from which the payment is made has no bearing on the question. Where an amount is paid which, so far as the payer is concerned, is paid wholly or partly out of the capital, and the receiver receives it as income on his part, the entire receipt is taxable in the hands of the receiver. Therefore the fact that the amount sought to be taxed in these appeals was capital gains in the hands of the company is not a relevant circumstance. What

we have to see is what it was in the hands of the assesseees. The question whether a particular receipt is a capital receipt or a revenue receipt is a somewhat difficult question to decide though the principles bearing on the question are well settled. The application of those principles to a given set of facts often creates difficulties. The decision by and large depends upon the facts of each case.

So far as the first question set out earlier is concerned the same is settled by the decision of this Court in *Commissioner of Income-tax, West Bengal v. Nalin Behari Lall Singha* (1). The assessee therein was also one of the shareholders of Ukhara Estate Zamindaries Ltd. His case was no different from that of the respondents herein. But the only point that arose for decision in that appeal was whether the receipts similar to those we are considering here can be considered as 'dividends'? This court answered that question in the negative. This Court refused to go in to the question whether the same could be considered as income other than dividend. Dealing with that contention this Court observed :

“Counsel for the revenue sought to argue that the share of dividend which is not chargeable to tax by virtue of the exemption clause is still liable to tax as income other than dividend. But no such contention was raised before the Tribunal or the High Court and no question was raised in that behalf. We will not be justified in entering upon the question which was not raised or argued before the Tribunal and before the High Court.”

In these appeals we have to decide what was left undecided in that case.

Coming back to the question how exactly to draw the line between a capital receipt and a revenue receipt in cases of the type that are before us, one can do no better than refer to the observations of Finlay J. in *Trustees of the Will of H. K. Brodie (deceased) v. Commissioner Inland Revenue* (2).

“But, I think, the governing consideration is this: the question being, was the sum received as income, one has to consider what was the source from which

(1) 74 I.T.R. 749.

(2) 17 T.C. 432 at p. 439.

A it was received and what were the circumstances in
which it was received. If the capital belonged to the
person receiving the sums—if he or she was benefi-
cially entitled not only to the income but to the
capital then I should think that, when the payments
B were made, they ought to be regarded, and would be
regarded, as payments out of capital, but where there
is a right to the income, but the capital belongs to
somebody else, then, if payments out of capital are
made and made in such a form that they come into the
hands of the beneficiaries as income, it seems to me
C that they are income and not the less income, not of
the person receiving them, but in the hands of some-
body else—capital.”

The above observations, in our opinion, correctly set
out the law.

D Let us now turn to the facts of this case. The assessee
were shareholders in the company. They were beneficially
entitled to the capital of the company. The amount with
which we are concerned in these appeals was received by the
company as Salamis and as compensation for the acquisi-
tion of the lands of the company. It was not something
E earned by the company in the course of its business. Un-
doubtedly it was a capital receipt in the hands of the com-
pany but that by itself is not sufficient. We have next to
see whether it was a capital receipt in the hands of the
assessee. As mentioned earlier, the assessee had a benefi-
cial interest in that sum when it was in the hands of the
F company. Therefore when that sum was distributed
amongst the shareholders of the company, each of the share-
holders took a share of the capital set in which they
were beneficially entitled. That being so the receipt
with which we are concerned in these appeals must
also be considered as capital receipt. The fact that
G those sums were distributed as ‘dividends’ does not change
the true nature of the receipt. A receipt is what it is and
not what it is called.

In the result these appeals fail and they are dismissed
with costs—hearing fee one set.

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