

A THE COMMISSIONER OF INCOME TAX
v.
M/S. EXPRESS NEWS PAPERS LTD.

JANUARY 21, 1998

B [B.N. KIRPAL AND S.P. KURDUKAR, JJ.]

Income Tax Act, 1961/Finance Act, 1964 .

C *Interim dividend—Nature of—Declaration of interim dividend by Board of Directors on 6.12.1962 to be payable on 16.1.1963—Accounting year of Company being calendar year—Income Tax Officer reduced the rebate for the assessment year 1964-65 to the extent of interim dividend—Held, provisions of clause (c) of proviso 2(1) attracted—Income tax authorities were right in reducing the rebate for the assessment year 1964-65—Interim dividend cannot be construed as meaning declaration of dividend by Company—Nature of the interim dividend is such that it gives no right to shareholders to receive it merely on passing of resolution by Board of Directors whereas on a dividend being declared by the Company in General meeting, a vested right accrues to shareholders.*

E *J. Dalmia v. Commissioner of Income Tax, Delhi, 53 I.T.R. 83, relied on.*

Companies Act, 1956

F *S. 205, Table A, Clauses 85 and 86—Declaration of interim dividend by Board of Directors on 6.12.1962 payable on 16.1.1963—Accounting year of Company being Calender year—Held, where the Board of Director, and, not the company in general meeting, decides to pay interim dividend, the rebate will be withdrawn in the year of distribution of the interim dividend, there being no declaration by the company for payment thereof.*

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2941-42 of 1985.

From the Judgment and Order dated 30.10.79 of the Madras High Court in T.C. Nos. 22-23 of 1976.

S. Rajappa and B.K. Prasad for the Appellants.

H Manoj Arora, N.B. Joshi, P.H. Parekh and S. Bharhari for the

Respondents.

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The following Order of the Court was delivered :

The respondent is a Public Limited Company which is running a well known newspaper. The Indian Express and we are concerned in this case with Income Tax for assessment year 1964-65.

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On 6th December, 1962 the Board of Directors of the respondent-company passed a resolution whereby it decided that interim dividend should be distributed amongst the shareholders. The resolution further provided that this dividend would be payable on 16th January, 1963. It may here be noticed that the accounting year of the respondent-Company is the calendar year. The resolution which was passed on 6th December, 1962, therefore, was in the previous year relevant to the assessment year 1963-64 whereby the payment was made to the shareholders in the following year relevant to the assessment year 1964-65.

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In determining the amount of tax which was payable by the Company for the assessment year 1964-65 the Income Tax Officer came to the conclusion that the rebate which was available to the Company under the Finance Act, 1964 had to be reduced to the extent of the interim dividend paid to its shareholders in January, 1963. The claim of the respondent, in the appeal filed by it, was that the Board of Directors had declared the dividend on 6.12.1962, i.e. before the start of the relevant previous year and the payment was made in the subsequent previous year and, therefore, by virtue of Explanation 3 to the first proviso of the Finance Act, 1964 the rebate could not be reduced. Having failed to get any relief from the appellate authorities, a question of law with regard to this aspect was referred to the High Court by the Tribunal. Two others questions were also referred but we are not concerned with those in the present case and answer to them stand concluded by the judgment of the High Court.

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The High Court reframed the relevant question of law as follows:-

“Whether on the facts and the in the circumstance of the case the sum of Rs. 3,39,000 declared as dividends on 6th December, 1962, by the Board of Directors, but payable only on 16th January, 1963, could be taken into account in withdrawing the rebate admissible under the first proviso to the Finance Act of 1964 by reference to sub-clause (c) of Clause (i) of the second proviso to the same Act read with

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A Explanation 3 to the same Act.”

B The High Court came to the conclusion that the company, acting through its Directors, had declared the interim dividend on behalf of the Company and when the payment was made not in the same previous year but was made in the subsequent year, Explanation 3 became applicable and the rebate could not be reduced. In this appeal it has been contented by the learned counsel for the appellant that the High Court erred in coming to the conclusion that there was any declaration of any dividend, as understood under the Companies Act, by the Company. According to the learned counsel, the resolution of the Board of Directors dated 6th December, 1962 cannot be regarded as a declaration of dividend by the Company and therefore what was relevant is to see the date when the interim dividend was distributed and as the distribution took place in the previous year relevant to the assessment year 1964-65 therefore the rebate to that extent was rightly withdrawn. On behalf of the respondent, however, it was submitted that the judgment of the High Court called for no interference as the distribution of the dividend took place pursuant to the declaration by the Board of Directors.

C In order to appreciate the point in issue, it will be appropriate to refer to the relevant provision. The Finance Act, 1964, like all other Finance Acts, inter-alia, provides for the rate at which Income-tax and Super tax is levied. According to this Act the rate of Super tax of the whole of the total income was 55% , as per paragraph D of Part (II) of the Finance Act, 1964. The first proviso to this contains the rebate which is allowed in computation of the tax. This rebate is, however, reduced wherever the provisions of the second proviso become applicable. In the present case, second proviso clause 1 (i) (c), inter-alia, provides that the amount of rebate shall be reduced where the Company has “declared or distributed to its shareholders during the previous year any dividend...” The rate of reduction, as per this sub-clause is 7.5% on the whole of the amount of dividend which is declared. Explanation 3, on which reliance is placed by the respondent, to this provision reads as follows:

F “Explanation 3. - For the removal of doubts it is hereby declared that where any dividends were declared by the company before the commencement of the previous year and are distributed by it during that year, no reduction in the rebate shall be made under sub-clause (c) of clause (i) of the second proviso in respect of such dividends.”

H On a carefully examination of the aforesaid provision, it appears to us

that the rebate given by the first proviso can be reduced if dividend has been declared or distributed by the Company to its shareholders. Two expressions are used, namely, "declared" and "distributed". Learned counsel for the respondent is right in construing Explanation 3 to mean that if the declaration of the dividend is in the year prior to the commencement of the relevant previous year but the distribution is in the relevant previous year then no rebate would be reduced in which distribution takes place. In other words, the rebate, as far as Explanation 3 is concerned, can be reduced only if the declaration and the distribution is in the same previous year. A B

In our opinion, the High Court committed an error in proceeding on the assumption that the resolution passed by the Board of Directors on 6th December, 1962 amounted to a declaration of dividend. Under Sec. 205 of the Companies Act, dividend is distributed on a resolution being passed by the company in general meeting. The Companies Act, as such, does not specifically refer to the distribution of interim dividend. Table A, however, provides for payment of interim dividends. Two clauses of Table A to the Companies Act, namely, Clause 85 and 86 read as follows:- C D

"85. The Company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

86. The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the Company." E

Unfortunately, the Articles of Association of the respondent-company are not on record but normally, as is expected, the Articles of Association would be in consonance with the provisions of Table A. The perusal of aforesaid Clauses 85 and 86 clearly brings out the distinction in the power of the Company and the Board of the Directors . It is a Company which in general meeting is empowered to declare dividend. Clause 86 does not give the Board of Directors power to declare any dividend but only enables it to pay interim dividend to the members of the Company from time to time. It is because there is a difference in the power which is exercised by the Company in general meeting, vis-a-vis, the one exercised by the Board of Directors while deciding to pay an interim dividend, that in clause (c) of the second proviso in the Finance Act, the expression used is "declared or distributed to its shareholders". This clearly postulates a situation where they may be distributed of dividend without its declaration. This can be where the Board of Directors and not the Company in general meeting, decides to pay interim F G H

A dividend in which case the rebate will be withdrawn in the year of distribution of the interim dividend, there being no declaration by the Company for the payment thereof.

B The difference in the nature of interim dividend and the dividend declared by the company general meeting is clearly brought out in a decision of this Court in the case of *J. Dalmia v. Commissioner of Income Tax*, Delhi 53 I.T.R. 83. In that case the Board of Directors had declared an interim dividend in its meeting held on 30th August, 1950 and payment was made to the shareholders by dividend warrants issued on 28th December, 1950. The accounting year of the assessee ended on 30th September, 1950, relevant to C the assessment year 1951-52. The question arose whether the interim dividend declared by the Board of Directors in the previous year relevant to the assessment year 1951-52 was to be taxed in that year or was the interim dividend liable to be taxed in the assessment year 1952-53 because the payment was made in that previous year. Dealing with the nature of the D interim dividend, this Court at page 87 observed as follows:-

E “There is no doubt that a declaration of dividend by a company in general meeting gives rise to a debt. “when a company declares a dividend on its shares, a debt immediately becomes payable to each shareholder in respect of his dividend for which he can sue at law, and the statute of limitation immediately begins to run”. In re Severn and Why and Severn Bridge Railway Company. But this rule applies only in case of dividend declared by the company in general meeting. A final dividend in general may be sanctioned at an annual meeting when the accounts are presented to the members. But power to pay F interim dividend is usually vested by the articles of association in the directors. For paying interim dividend a resolution of the Company is not required: if the directors are authorised by the articles of association they may pay such amount as they think proper, having regard to their estimate of the profits made by the company. Interim dividend is G therefore paid pursuant to the resolution of the directors on some day between the ordinary general meetings of the company. On payment, undoubtedly interim dividend becomes the property of the shareholder. But a mere resolution of the directors resolving to pay a certain amount as interim dividend does not create a debt enforceable against H the company, for it is always open to the directors to rescind the resolution before payment of the dividend. In *Lagunas Nitrate*

Company (Limited) v. Henry Schroeder and Company the directors of a company passed a resolution declaring interim dividend payable on a future date, and requested the company's bankers to set apart, out of the money of the Company in their hands, into a special account entitled "Interim Dividend Account", a sum sufficient to cover the dividend, pending the company's instructions. But before the date fixed for payment, the directors resolved that pending certain litigation to which the company was a party payment of dividend be postponed. It was held by the Court that the directors had the right even after resolving to pay interim dividend to rescind the resolution and no enforceable right arose in favour of the members of the Company by the declaration of interim dividend.

Therefore, a declaration by a company in general meeting gives rise to an enforceable obligation, but a resolution of the board of directors resolving to pay interim dividend or even resolving to declare interim dividend pursuant to the authority conferred upon them by the articles of association gives rise to no enforceable obligation rescinded. Therefore, departure in the text of article 74 of the articles of association of Govan Bros. from the statutory version under Table A of the power in respect of interim dividend, dividend which may be entrusted to the directors, makes no real difference in the true character of the right arising in favour of the members of the company on the execution of the power. The directors, by the articles of association, are entrusted with the administration of the affairs of a company; it is open to them if so authorised to declare interim dividend. They may, but are not bound to, pay interim dividend even if the finances of the company justify such payment. Even if the directors have resolved to pay interim dividend, they may before payment rescind the resolution."

The aforesaid observation clearly supports the view which we have taken, namely, that the nature of the interim dividend is such that it gives no right to the shareholders to receive it merely on the passing of the resolution by the Board of Directors whereas on a dividend being declared by the Company in general meeting a vested right accrues to the shareholders. This being so, if the Company in general meeting had declared a dividend on 6th December, 1962 and the same was distributed in January 1963, then the aforesaid Explanation 3 would have been applicable. But in the present case, the decision of the Board of Directors on 6th December, 1962 to pay interim

A dividend cannot be construed as meaning declaration of dividend by the company. This being so what would be relevant is the distribution of the dividend in January, 1963, thereby attracting the provisions of Clause (c) of proviso 2(i) and the Income-tax authorities were therefore right in reducing the rebate in the manner in which they did for the assessment year 1964-65.

B For the aforesaid reason, the appeals are allowed. The judgment of the High Court is set aside. The question of law, as reframed by the High Court, is answered in the affirmative and in favour of the revenue. There will be no order as to costs.

R.P.

Appeal allowed.