

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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I.T.T.A.Nos.438 of 2015 & 449 of 2014

COMMON JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

Both these appeals are filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for short "the Act"). While I.T.T.A.No.438 of 2015 is preferred against the order of the Tribunal in I.T.A.No.1774 of 2011 dated 03.08.2012 which relates to the assessment year 2003-04, I.T.T.A.No.449 of 2014 is preferred against the order passed by the Tribunal in I.T.A.No.293 of 2013 dated 31.05.2013 for the assessment year 2009-10. As the parties in both the appeals are common and the questions of law, which arise for consideration in both the appeals, are the same, both the appeals were heard together and are now being disposed of by a common order.

The question, which arises for consideration in these appeals, is regarding levy of interest under Section 115-P of the Act. The assessee, a public limited company, made a provision, for payment of dividend, in its books of accounts at the end of the relevant financial year. After the accounts were finalised and approved by the Board, the shareholders of the company in the Annual General Meeting declared final dividend. Dividend tax was paid within 14 days of the said declaration. The Assessing Officer levied interest of Rs.1,33,98,180/- and Rs.3,82,15,542/- treating the provision for payment of dividend as declaration of final dividend. On the ground that tax ought to have been remitted by 14th April (within 14 days of making the provision), and as tax was paid within 14 days of the declaration of dividend by the shareholders in the Annual General Meeting, interest was levied on belated payment of dividend tax. Aggrieved thereby, the assessee carried the matter in appeals before the Commissioner of Income Tax (Appeals).

Before the Commissioner, the assessee contended that, under the Act, the Board of Directors had the power to recommend dividend, required to be declared by the shareholders in the Annual General Meeting; preparation of accounts, making a provision for proposed dividend at the end of the year, does not amount to declaration of dividend; it is only when the shareholders of the company declare dividend in the Annual General Meeting can dividend be said to have

been declared; and, since tax was paid under Section 115-P of the Act within the time limit prescribed under Section 115-O of the Act i.e. 14 days from the date of declaration of dividend, levy of interest was illegal.

In his order, the Commissioner (Appeals) held that finalisation of accounts cannot be equated to declaration of dividend; the latter is a specific decision to be taken by the board; dividend declaration is not automatic upon the presence of profits or reserves; this is a decision of the management; within 14 days of the Annual General Body meeting being held, wherein dividend was declared, dividend tax was paid; and as payment of dividend tax was well within the time limit prescribed under Section 115-O of the Act, levy of interest was invalid.

Aggrieved thereby, the Revenue carried the matter in appeal before the Tribunal. In its order in I.T.A.No.1774 of 2011 dated 03.08.2012, the Tribunal held that declaration of dividend was not automatic upon finalisation of accounts, and presence of profits and reserves; declaration of dividend is within the domain of Board of directors, and the management; the date of declaration of dividend is when it is actually declared by the Board; and from the material on record it was clear that dividend was declared for the assessment year 2003-04 on 24.09.2003, and tax was paid on 03.10.2003 which was within the time limit prescribed under Section 115-P of the Act. In I.T.A.No.293 of 2013, the Tribunal followed its earlier order in I.T.A.No.1774 of 2011 and held in favour of the assessee.

Section 173 of the Companies Act requires an explanatory statement to be annexed to notice except, among others, declaration of dividend. Section 217 of the Companies Act relates to the report of the Board of Directors. Section 217(1)(c) stipulates that there shall be attached to every balance sheet, laid before a company in general meeting, a report by its Board of Directors with respect to the amount, if any, which it recommends should be paid by way of dividend. Table-A of the I Schedule to the Companies Act contain the Regulations for management of a company limited by shares. Regulation 85 thereunder stipulates that the company, in the general meeting, may declare dividends, but no dividend shall exceed the amount recommended by the Board. A copy of the Articles of Association of the assessee has also been placed before us. Article 94 thereof provides that the company in the general meeting may declare a dividend to be paid to the members according to their rights and interests in the profits, but no dividend shall exceed the amount recommended by the Directors. The Supreme Court in ***Commissioner of Income Tax vs. Express Newspapers Limited*** referred with approval to its earlier judgment in ***J.Dalmia vs.***

Commissioner of Income Tax, and to Articles 85 and 86 of Table A of the I Schedule to the Companies Act, to hold that the power of the Board of Directors of Company is only to declare interim dividend, whereas final dividend is to be declared only by the company in its general meeting. It is evident, therefore, that the power of the Board of Directors is only to recommend dividend; and it is for the shareholders of the company, in the general meeting, to declare dividend. It is not in dispute that dividend tax, under Section 115-P of the Act, was paid by the assessee well within 14 days of declaration of dividend by the shareholders in the Annual General Meeting.

The contention of the Revenue that a provision for payment of dividend, in the balance sheet of the assessee, would itself amount to declaration of dividend does not merit acceptance, as provision for payment of dividend does not automatically result in payment of dividend. It is only after the Board of Directors decide to recommend dividend, and the share holders in the general meeting approve the recommendation of the Board of Directors, can dividend be held to have been declared. We find no error in the orders of the Tribunal, much less a substantial question of law, necessitating interference under Section 260-A of the Act.

Both the appeals fail and are, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall also stand dismissed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 30.11.2015

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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