

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 18.02.2025

ORDERS PRONOUNCED ON : 16.04.2025

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) No. 1044 of 2009

B. Jayalakshmi

... Appellant

Vs.

The Deputy Commissioner of Income Tax,
Circle I,
Chennai – 34.

... Respondent

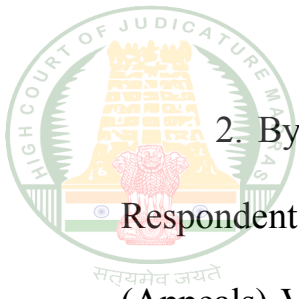
Tax Case Appeal is filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'A' Bench, Chennai dated 18.05.2009 in I.T.A.No.997/Mds/2008 for the Assessment Year 2003-2004 and for setting aside the same.

For Appellant : Mr. R. Sivaraman
For Respondent : Mr. T. Ravikumar,
Senior Standing Counsel

J U D G M E N T

(Judgment of this Court was delivered by **C.SARAVANAN, J.**)

This Appeal is directed against the Impugned Order dated 18.05.2009 passed by the Income Tax Appellate Tribunal (ITAT) (hereinafter referred to as the 'Tribunal') in I.T.A. No. 997/Mds/2008 for the Assessment Year 2003-04.



2. By the Impugned Order, the Tribunal allowed the appeal preferred by the

Respondent against the Order dated 24.01.2008 of the Commissioner of Income Tax

(Appeals)-VI, Chennai (hereinafter referred to as the 'Appellate Commissioner')

wherein, the appeal preferred by the Appellant/Assessee against the Assessment Order dated 28.06.2007 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was allowed.

3. The operative portion of the Impugned Order dated 18.05.2009 passed by the Tribunal in I.T.A. No. 997/Mds/2008 reads as under: -

“2.6. After having heard both the sides and going through the written submission and case law cited, we find that interim dividend of Rs.10,26,100/- declared by the company was paid through cheque dated 23.04.2002 unconditionally to the assessee and moreover there is no mention about having considered the inclusion of dividend income in the assessment order originally passed as is apparent from the language used in the assessment order. So it cannot be said that there is any opinion formed by the Assessing Officer at the time of passing of original assessment order and that apart, as rightly argued by the Id. DR that when reopening is within four years, there is no requirement of looking into this aspect. In this case, reasons are set out in the letter of the Assessing Officer dated 05.02.2007 so reopening is within four year as per the Hon'ble Jurisdictional High Court in the case of Apollo Hospital Enterprises Ltd., 300 ITR 167 [which overruled single member decision as reported in 287 ITR 25] has held as under:

“Reassessment – notice – validity of notice – amalgamation of hospitals in 2000 -m benefit of carry forward and set off of unabsorbed depreciation wrongly allowed – notice within four years – valid – Income-Tax Act, 1961, ss. 72A, 147, 148.”

As such, the plea in this regard is rejected.”

3. So far as audit party's observation is concerned, the Hon'ble Supreme Court in the case of CIT v. P.V.S. Beedies Pvt. Ltd., 237 ITR 13, it has been held as under:

“Reassessment – information – internal audit party



entitled to point out factual error or omission in assessment – reopening of case on basis of factual error pointed out by internal audit party is permissible under law – ITO granting deduction under Section 80G on account of donation to charitable trust overlooking fact that recognition granted to charitable trust had expired – reopening was on basis of factual information given by internal audit party – reopening of assessment valid – Income Tax Act, 1961, s. 147(b).”

So, the plea of the assessee on this point is also untenable.

4. As regards year of taxability of interim dividend is concerned, relevant provision as contained in the Section 8(b) reads as under:

[(b) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.]

The language of the provision as reproduced above is plain, clear and unambiguous and the Hon'ble Gujarat High Court in the case of CIT v. Gautam Sarabhai Trust [173 ITR 216] has held that:

“INTERPRETATION OF TAXING STATUTES – WORDS TO BE GIVEN PLAIN GRAMMATICAL MEANING.”

The Hon'ble Kerla High Court in case of R. Gao Electrodes Ltd., V. CIT [173 ITR 351] has held that:

“INTERPRETATION OF TAXING STATUTES – WORDS TO BE ASSIGNED THEIR ORDINARY MEANING – NO ROOM FOR INTENDMENT.”

The Hon'ble Supreme Court in the case of Mohammad Ali Khan and Others v. CWT 224 ITR 672 has held as under:

“The intention of the Legislature is primarily to be gathered from the language used. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by the Legislature.”

The Hon'ble Supreme Court in the case of Padmasundara Rao (Decd.) and Others v. State of Tamil Nadu and Others 255 ITR 147 has held as under:

The court cannot read anything into a statutory provision which is plain and unambiguous. A statute is the edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself.”

4.1 As the assessee has received the interim dividend vide cheque



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No.820607 dated 23.04.2002 from the concerned company so, in our considered opinion, the same could be considered and taxed in the year ending 31.03.2003 relevant to the assessment year 2003-04 only. Since such income on account of receipt of interim dividend has escaped assessment, so the Assessing Officer is legally correct to reopen the assessment by initiating reassessment proceedings and then taxing the interim dividend income in this year, in view of the facts, circumstances and precedents relied upon and the ratio of such decisions as discussed and the Id. CIT(A)'s action to hold reassessment to be not legally valid as well as holding that interim dividend income of Rs.10,26,100/- to be not taxable in the year under consideration being not legally and factually correct is reversed and that of the Assessing Officer, on both the counts is restored.

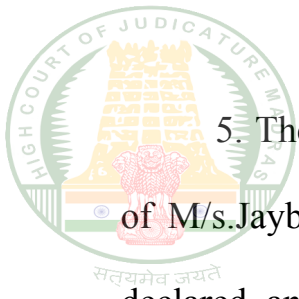
5. In the result, the appeal of the Revenue gets accepted.”

4. This Tax Case Appeal was admitted by this Court on 02.11.2009 and the following substantial questions of law were framed. They read as under:-

“1. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in holding that the reopening of assessment u/s 147 is valid and does not amount to a change of opinion in respect of assessment passed u/s 143(3)?

2. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in denying the exemption of interim dividend u/s 8(b) of the Act for Rs.10,26,100/- for the assessment year 2003-2004?

3. Whether on the facts and circumstances of the case the Appellate Tribunal was right in holding that the interim dividend of Rs.10,26,100/- be taxed during the relevant assessment year when admittedly dividend tax was paid in the previous year as per the provision 115(o) of the Income Tax Act?”



5. The brief facts of the case is that the Appellant/Assessee was a shareholder of M/s.Jaybeear Investments and Finance Private Limited. The said company had declared an interim dividend of **Rs.45,00,000/-** on **14.03.2002** to be paid to its shareholders. A sum of **Rs.4,59,000/-** was also paid as tax on **22.03.2002** under Section 115(O) of the Act on the aforesaid interim dividend of Rs.45,00,000/- declared on **22.03.2002** by the aforesaid Company.

6. The aforesaid interim dividend accrued as an income in the hands of the Appellant/Assessee as shareholders of the said company, which was exempt from tax in terms of Section 10(33) of the Act as it stood then. The Appellant/Assessee had thus claimed this interim dividend declared by the aforesaid Company on **14.03.2002** in its Return of Income filed for the **Assessment Year 2002-2003** for the relevant **Previous Year 2001-2002**. Therefore, the Appellant/Assessee claimed exemption in terms of Section 10(33) of Act in the return filed by the Appellant/Assessee for the **Assessment Year 2002-2003**.

7. The Appellant/Assessee received the interim dividend of **Rs.10,26,100/-** by way of cheque only on **23.04.2002** from the aforesaid company i.e., during the Previous Year 2002-2003 assessable during the **Assessment Year 2003-2004** with effect from **01.04.2003**. With effect from **01.04.2003**, Section 10(33) of the Act was deleted vide Finance Act, 2002.

8. For the **Assessment Year 2003-2004**, the Appellant/Assessee had filed



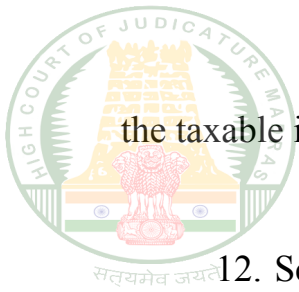
Return of Income on **03.11.2003** admitting a total income of **Rs.8,43,977/-** only. III

the aforesaid return of income, the Appellant/Assessee did not declare the aforesaid interim dividend of **Rs.10,26,100/-** received by way of cheque on **23.04.2002** from the aforesaid Company.

9. The said Return of Income filed for the Assessment Year 2003-2004 was also processed under Section 143(1) of the Act on 15.03.2004. Thereafter, the assessment was completed and an Assessment Order was passed under Section 143(3) of the Act on **30.12.2005** for the **Assessment Year 2003-2004** after the case was selected for scrutiny and after issuance of a Notice under Section 143(2) of the Act on 16.11.2004.

10. Thereafter, Notice was issued under Section 148 of the Act on **28.06.2005** to the Appellant/Assessee for the **Assessment Year 2003-2004** stating that though the aforesaid Company had declared interim dividend on **14.03.2002**, since the interim dividend was actually received by the Appellant/Assessee on **23.04.2002** during the Financial Year 2002-2003, it was taxable in the hands of the Appellant/Assessee in the relevant **Assessment Year 2003-2004** as the exemption under Section 10(33) of the Act had been deleted with effect from **01.04.2003** vide Finance Act, 2002.

11. Thus, the Respondent wanted to include the aforesaid interim dividend received by the Appellant/Assessee from the aforesaid Company on **23.04.2002** in



the taxable income of the Appellant/Assessee for the **Assessment Year 2003-2004**.

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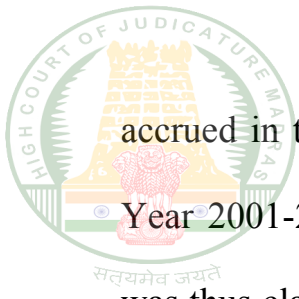
12. Scrutinizing the Return of Income filed by the Appellant/Assessee for the Assessment Year 2003-2004, a revised Assessment Order dated **28.06.2007** was passed under Section 143(3) r/w Section 147 of the Act by the Respondent.

13. The Appellant/Assessee challenged the aforesaid Assessment Order dated 28.06.2007 before the Commissioner of Income Tax (Appeals) in ITA. No.84/2007-08. The Commissioner of Income Tax (Appeals) vide Order dated 24.01.2008 allowed the appeal of the Appellant/Assessee.

14. However, the aforesaid Order of the Commissioner of Income Tax (Appeals) dated 24.01.2008 in ITA.No.84/2007-08 was reversed by the Tribunal vide Impugned Order dated 18.05.2009 in ITA No. 997/2008. Hence, the present Tax Case Appeal has been filed by the Appellant/Assessee against the aforesaid Order of the Tribunal.

15. In support of the present appeal, the learned counsel for the Appellant stated that the Tribunal has erred in reversing a well considered decision dated 24.01.2008 of the Commissioner of Income Tax (Appeals) in ITA. No.84/2007-08 vide Impugned Order dated 18.05.2009.

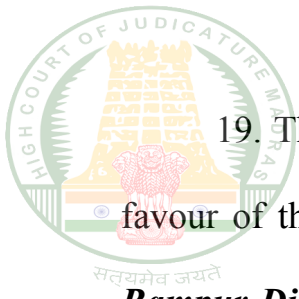
16. It is submitted by the learned counsel for the Appellant that the income from the aforesaid interim dividend of Rs.10,26,100/- from the said Company



accrued in the hands of the Appellant/Assessee on 14.03.2002 during the Financial Year 2001-2002 relevant to the Assessment 2002-2003. It is stated that exemption was thus claimed by the Appellant/Assessee for the amount accrued from the interim dividend from the aforesaid Company in the return of income filed on **03.11.2003** for the Assessment Year 2003-2004 and the same was allowed as being exempted under Section 10(33) of the Act read with Section 8(1) of the Act.

17. It is further submitted by the learned counsel for the Appellant that issuance of Notice dated 28.06.2007 under Section 148 of the Act for the **Assessment Year 2003-2004** itself was without jurisdiction as the return filed by the Appellant/Assessee on **03.11.2003** was already the subject matter of scrutiny in the **Assessment Order** dated **30.12.2005** passed under Section 143(3) of the Act for the **Assessment Year 2003-2004**. Therefore, the Assessment Order dated **28.06.2007** passed under Section 143(3) r/w Section 147 of the Act was wrongly affirmed by the Tribunal.

18. It is submitted by the learned counsel for the Appellant that change of opinion as a reason to reopen the assessment without proper evidence of income escaping assessment is impermissible in terms of the decision of the Hon'ble Supreme Court in *CIT v. Kelvinator of India* reported in **(2010) 320 ITR 561**, wherein it was held by the Hon'ble Supreme Court that the Assessing Officer has power to reopen the assessment of income of the Assessee only if there is tangible material to come to a conclusion that income has escaped from assessment.



19. That apart, it is submitted that even on merits, the issue is now covered in favour of the Appellant/Assessee by the decision of the Hon'ble Supreme Court in ***Rampur Distillery and Chemicals Company Ltd., v. Commissioner of Income Tax*** reported in ***(1991) 187 ITR 561 (SC)***, wherein the Hon'ble Supreme Court that the dividend would be said to have paid when the company discharges its liability and makes the amount of dividend unconditionally available to the members entitled. Therefore, it was taxable only in the year it was paid, credited or distributed or deemed to have been paid, credited or distributed.

20. That apart, in this connection, the learned counsel for the Appellant/Assessee also referred to few other decisions of various High Courts as detailed below:

- i) ***Marico Ltd., v. The Assistant Commissioner of Income Tax and Others*** in ***W.P. No. 1917 of 2019*** dated 21.08.2019.
- ii) ***The Assistant Commissioner of Income Tax and Others v. Marico Ltd (Special Leave Petition (Civil) Diary No. 7367/2020)***
- iii) ***CIT v. Bharat General Reinsurance Co. Ltd., (1971) 81 ITR 303 (Delhi)***

21. It is submitted that the decision of the Bombay High Court in ***Marico Ltd., v. The Assistant Commissioner of Income Tax and Others*** has also been affirmed by the Hon'ble Supreme Court vide Order dated 01.06.2020 in ***Assistant Commissioner of Income Tax v. Marico Ltd*** in ***Special Leave Petition (Civil Diary No.7367/2020 on 01.06.2020.***

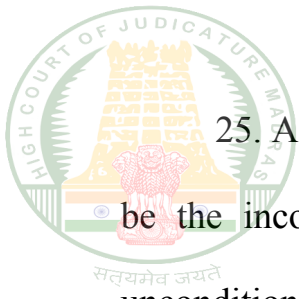


22. On the other hand, defending the impugned order of the Tribunal, the learned counsel for the Respondent relied on the decision of the Hon'ble Supreme Court and various High Courts rendered in the context of Section 8 of the Act and the issue regarding the reopening of assessment under Section 148 of the Act. In this regard, reference was made by the learned counsel for the Respondent to the following decisions:-

- i) ***Kesoram Industries and Cotton Mills Ltd., v. CWT – 59 ITR 767 (SC)***
- ii) ***B V Venkatesan Chetty Vs CIT – 154 ITR 217 (AP)***
- iii) ***Tarajan Tea Co. Pvt., Ltd., Vs CIT – 204 ITR 218 (Gau)***
- iv) ***CIT Vs Express News Papers Ltd – 230 ITR 477 (SC)***
- v) ***Pifzer Corpn Vs. ITO – 27 ITD 233 (Bom – Trib)***
- vi) ***ACIT Vs Rajesh Jhaveri Stock Brokers P Ltd 291 ITR page 500 SC***
- vii) ***Ajantha (P) Ltd Vs ACIT – 78 Taxmann.com 48 (Guj)***

23. We have considered the arguments advanced by the learned counsel for the Appellant and the learned counsel for the Respondent. We have also had the benefit of perusing the documents that were produced before the Tribunal.

24. As per Section 8(a) of the Act, dividend declared or distributed or paid by a Company shall be deemed to be the income of the previous year in which it is so declared, distributed or paid. Thus, a dividend declared or distributed or paid by a Company to its shareholders has to be included in the total income of the shareholders of the Company.



25. As per Section 8(b) of the Act, even an interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the Company to the members/shareholders who are entitled to it.

26. For the sake of clarity, Section 8 of the Act as it stood during the period in dispute is extracted hereunder;

“8. Dividend Income.

For the purposes of inclusion in the total income of an assessee —

- 1. any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2 shall be deemed to be the income of previous year in which it is so declared, distributed or paid, as the case may be;*
- 2. any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.”*

27. The undisputed facts of the case is that in the Return of Income filed on **03.11.2003** for the **Assessment Year 2003-2004** by the Appellant/Assessee, interim dividend received on **23.4.2002** was not included

28. The Appellant/Assessee had also not specifically claimed any exemption under Section 10(33) read with Section 8(a) of the Act on the interim dividend received on **23.04.2002** after it was declared as payable on **14.03.2002** by the said



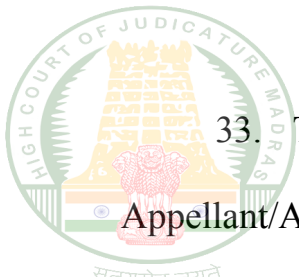
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29. Thus, when the interim dividend was declared on **14.03.2002** by the aforesaid Company, tax on such interim dividend was payable by the Company under Section 115(o) of the Act.

30. The dividend income which accrued on the Appellant/Assessee on the said date, was exempt from tax in the hands of the Appellant/Assessee during the **Assessment Year 2002-03** under Section 10(33) read with Section 115(o) and Section 8(a) of the Act as it stood then.

31. Thus, at the time when the interim dividend was declared by the said Company on **14.03.2002**, and when the tax was paid by the aforesaid company on **22.03.2002** during the Financial Year 2001-2002 relevant to the **Assessment Year 2002-2003** on the aforesaid interim dividend, such interim dividend was exempted from levy of tax in the hands of the Appellant/Assessee as a shareholder of the aforesaid Company under 10(33) of the Act.

32. The right to receive interim dividend arose on **14.03.2002** during the **Financial Year 2001-2002** relevant to the **Assessment Year 2002-2003** to the Appellant/Assessee. However, the actual receipt of the interim dividend by the Appellant/Assessee on **23.04.2002** was during the **Financial Year 2002-2003** relevant to the **Assessment Year 2003-2004**.

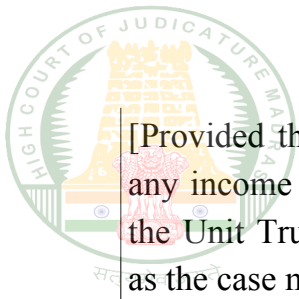


33. Thus, when the interim dividend was actually received by the

Appellant/Assessee on **23.04.2002** during the **Financial Year 2002-2003** relevant to the **Assessment Year 2003-2004**, such interim dividend was not exempted from tax with effect from 01.04.2003 for Assessment Year 2003-2004.

34. For the sake of clarity, Section 10, Clause 33 to Section 10 and Section 115(o) of the Act as it stood during the Previous Year 2001-2002 relevant to the Assessment Year 2002-2003 is reproduced below:-

Section 10 of the Act	
10. Incomes not included in total income - In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—	
Section 10(33) and Section 115(o) of the Act as it stood during the period of dispute	
Section 10(33) as amended by the Finance Act, 1999 w.e.f. 01.04.2000	Section 115(o) as amended by the Finance Act, 1997 w.e.f. 01.06.1997
(33) any income by way of - (i) dividends referred to in section 115-O or (ii) income received in respect of units from the Unit Trust of India established under the Unit Treat of India Act, 1963 (52 of 1963); or iii) income received in respect of the units of a mutual fund specified under clause (23D):]	(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of June, 1997, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of [ten] per



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[Provided that this clause shall not apply to any income arising from transfer of units of the Unit Trust of India or of a mutual fund, as the case may be.]

cent.

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of-

(a) declaration of any dividend; or

(b) distribution of any dividend; or

(c) payment of any dividend, whichever is earliest.

(4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon.

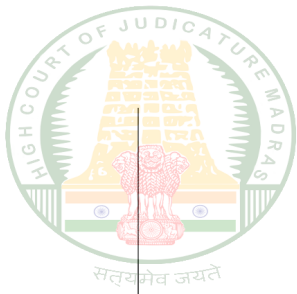


35. However, with effect from **01.04.2003**, exemption under Section 10(33) of the Act was deleted vide Finance Act, 2002 passed on **25.03.2002**. However, when Section 10(33) of the Act was deleted vide Finance Act, 2002 which passed on **25.03.2002** with effect from **01.04.2003**, there was no amendment to Section 8 of the Act.

36. As a sequitur to the deletion of Section 10(33) from the Act with effect from **01.04.2003** vide Finance Act, 2002, Section 115(o) of the Act was also amended by the Finance Act, 2002 with effect from 01.04.2003.

37. Thus, when the dividend was actually received by the Appellant/Assessee on **23.04.2002** (during **Financial Year 2002-2003**/ assessable during **Assessment Year 2003-2004**), Section 10(33) was deleted with effect from **01.04.2003**. Likewise, Section 115(O) of the Act was also amended. The snapshots of the provisions are reproduced below:-

Section 10(33) as amended by the Finance Act, 2002 w.e.f. 01.04.2003	Section 115(o) as amended by the Finance Act, 2002 w.e.f. 01.04.2003
<i>*Clause 33 to Section 10 was omitted by the Finance Act, 2002 w.e.f. 01.04.2003 dated 25.03.2002*</i>	(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of June, 1997 [but on or



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before the 31st day of March, 2004], whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of [ten] per cent.

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of-

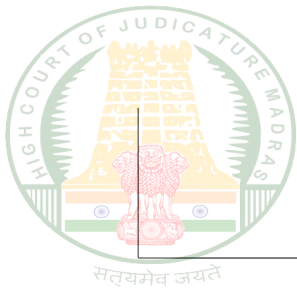
(a) declaration of any dividend; or

(b) distribution of any dividend; or

(c) payment of any dividend, whichever is earliest.

(4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to



the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon.

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38. Thus, dividend income was liable to tax in the hands of the shareholders with effect from **01.04.2003**. However, Clause (34) to Clause (36) to Section 10 of the Act were inserted with effect from **01.04.2004** by the Finance Act, 2003. Clause 33(i) as in force till **31.03.2002** which was earlier deleted with effect from 01.04.2003 vide Finance Act, 2002 was reintroduced as Clause (34) to Section 10 of the Act with effect from **01.04.2004** by the Finance Act, 2003.

39. Thus, the income from dividend was once again exempted from tax in the hands of the shareholders. Clause (34) to Section 10 of the Act as in force with effect from **01.04.2004** reads as under:-

“The following clauses (34),(35) and (36) shall be inserted after clause (33) of Section 10 by the Finance Act, 2003, w.e.f. 01.04.2003:

(34) any income by way of dividends referred to in Section 115-O;
....”

40. There is no dispute that when the income from interim dividend was declared on **14.03.2002** by the Company during **Financial Year 2001-2002** relevant to the **Assessment Year 2002-2003**, the interim dividend referred to in Section



115(o) was exempt from tax in the hands of the Appellant/Assessee. The fact also remains that dividend tax was also paid by the aforesaid Company on **22.03.2002**.

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41. The facts on record indicate that the income accrued from the interim dividend was unconditionally made available by the Company to its shareholders during the Financial Year 2001-2002 relevant to the Assessment Year 2002-2003 itself, though the amount accruing as income from the interim dividend was actually paid to the Appellant/Assessee by way of cheque only on **23.04.2002** during the **Financial Year 2001-2002** relevant to the **Assessment Year 2002-2003**. This is evident from a reading of Section 8(b) of the Act as it stood during the period in dispute.

42. When Section 10(33) and 115(o) of the Act are read in conjunction with Section 8(b) of the Income Tax Act, 1961, it is clear that for the purpose of total income of an assessee, any interim dividend shall be deemed to be the income of the previous year in which, the amount of such dividend was unconditionally made available by that company to the member who is entitled to it.

43. This view was also fortified by the Hon'ble Supreme Court in the case of **Rampur Distillery and Chemicals Co.Ltd, (1991) 187 ITR 561 (SC)**. Relevant portion of the judgement of the Hon'ble Supreme Court in the aforesaid case is extracted hereunder;

“5. From these facts the question is whether the dividend has been



irrevocably placed for distribution to the shareholders of the sugar company. Admittedly cement company was one of the shareholders whose names appeared on the register of the sugar company as on that date and the appellant is entitled to receive the dividend of the amount in dispute towards its share from cement company.

6. Sub-section (2) of Section 16 of the Indian Income Tax Act, 1922 reads thus:

"For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him"

7. Section 16(2) of the Indian Income Tax Act, 1922 prescribes special rules relating to the determination of the previous year in which the dividend is liable to be included in the total income of the assessee. It is provided thereby that for the purpose of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him. The question, therefore, is when declared dividend attracts the operation of Section 16(2) of the Indian Income Tax Act, 1922?

8. In *J. Dalmia v. CIT*, the facts are that the interim dividend was declared to the appellant therein on December 28, 1950 and the appellant claimed that the declared interim dividend was to be assessed in the assessment year 1951-52. The revenue assessed for the year 1952-53. The assessee claimed that the dividend was taxable in the assessment year 1951-52. While considering the incident of interim dividend this Court considered the scope of Section 16(2) and held that a mere resolution of the Directors resolving to pay certain amount as interim dividend does not create a debt enforceable against the company, for it is always open to the Directors to rescind the resolution before payment of the dividend. Whether dividend interim or fixed is income taxable in a particular year of assessment must be determined in the light of Section 16(2) of the Indian Income Tax Act. **The legislature had not made dividend income taxable in the year in which it becomes due: by express words of the statute, it is taxable only in the year in which it is paid, credited or distributed or is deemed to be paid, credited or**



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distributed. The legislature has made a distinct provision relating to the year in which different heads of income become taxable. The year in which a particular class of income becomes taxable must, therefore, be determined in the light of its true character, and subject to the special provision, if any, applicable thereto. The expression 'paid' in Section 16(2) it is true does not contemplate actual receipt of the dividend by the member. In general, dividend may be said to be paid within the meaning of Section 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. It was accordingly held that the interim dividend is only taxable in the assessment year in which the amount was actually paid. Since the dividend was paid in the previous year and the assessment year being 1952-53 it accordingly upheld the stand of the revenue. It is thus settled law that if the dividend declared by a company was unconditionally available to the assessee to be paid, it is taxable only in the year in which it is paid, credited or distributed or is deemed to be paid, credited or distributed.

9. This view was reiterated in Padmavati R. Saraiya v. CIT and Punjab Distilling Industries Ltd. v. CIT and CIT v. Bikaner Trading Co. Ltd. The settled law, therefore, is that generally the dividend would be said to have been paid within the meaning of Section 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the members entitled thereto. The legislatures had not made the dividend income taxable in the year in which it became due by express words of the statute. It was taxable only in the year in which it was paid, credited or distributed or was deemed to be paid, credited or distributed. From the facts it is clear that the sugar company had irrevocably placed the shares of the cement company with the trustees for being distributed to the shareholders as a dividend on January 16, 1952. It has also authorised the trustees to distribute to the shareholders by issuing negotiable certificates which have been made ready. But for the order of injunction issued by the High Court at the behest of some of the shareholders the Board of Trustees would have carried out the formal handing over the dividend in specie to the respective shareholders. In view of the fact that the injunction was issued prohibiting the Board of Trustees or their servants from distributing the



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dividend to the shareholders, they could not complete the distribution thereof. Since the dividend was unconditionally available to the members entitled thereto on January 16, 1952 in specie, it must be deemed to have been paid to the assessee. We may mention that the Delhi High Court in *CIT v. Bharat General Reinsurance Co. Ltd.* took the same view on the same facts and we hold that the view taken by the Delhi High Court is correct in law. **It is undoubted that the sugar company might remain to be owners till the dividend in specie are paid over qua the cement company. But the crucial question is whether the dividend in specie was unconditionally made available for being distributed and if anything was left to the general body of the shareholders to recall the dividend already resolved to be paid.** In as much as the general body of the shareholders unconditionally and irrevocably had resolved making over the dividend to the Board of Trustees for being distributed to its shareholders, nothing was left for the general body to recall the resolution. If any shareholder had called upon the trustees to distribute the shares falling to his share on any date between January 16, 1952 and February 22, 1952, the trustees would have been obliged to comply with the request. Nothing remained for the general body of the sugar company to recall the dividend. In fact the validity of the resolutions were upheld by the High Court in the compromise decree. The action of the sugar company to show in their balance sheet the declared dividend as the asset, does not have the effect of recalling the valid resolution already passed making available unconditionally the dividend for distribution to the shareholders as part of its trading activity.

10. Accordingly we hold that the High Court committed a clear error in its holding that the amount in question is includible in the assessment year 1957-58. We have no hesitation to hold that the company must be deemed to have paid, credited or distributed to its shareholders of the sugar company, and the dividend income of the assessee fell to be taxed in the assessment year 1952-53 and not in the assessment year 1957-58. The reference is answered in favour of the assessee and against the revenue. The appeal is accordingly allowed but in the circumstances parties are directed to bear their own costs.



44. In this case, the Appellant/Assessee has maintained a mercantile method of accounting as is evident from a cursory reading of Sl.No.8 of the table Assessment Order dated 30.12.2005 for the **Assessment Year 2003-2004**. Thus, the interim dividend that was declared on **14.03.2002** by the Company, had already accrued to the Appellant/Assessee on **14.03.2002** though the payment was actually made on **23.04.2002**. The earlier Assessment Order dated 15.03.2005 for the **Assessment Year 2003-2004** passed under Section 143(1) of the Act was reiterated on 30.12.2005 when the Assessment Order was passed under Section 143(3) of the Act for the **Assessment Year 2003-2004**.

45. It is clear that the income from the interim dividend is deemed to have accrued to the Appellant/Assessee during the Financial Year 2001-2002, relevant to the Assessment Year 2002-2003. Therefore, it was exempted from tax in the hands of the Appellant/Assessee in view of the exemption provided under Section 10(33) r/w Section 8(b) and 115(o) of the Act as it stood then during the Assessment Year 2002-2003. Such interim dividend cannot be therefore taxed in the hands of the Appellant/Assessee merely because it was received on 23.04.2002 during the Assessment Year 2003-2004.

46. That apart, the intention of the parliament was also to exempt income arising out of dividends received by the shareholders. As the income arising out of dividends was once again exempted with effect 01.03.2004 vide Finance Act, 2003. While dealing with somewhat of a similar situation in the context of Central Excise



Act and Central Excise Rules, 1944, the Hon'ble Supreme Court in **W.P.I.L. Ltd vs.**

Commissioner of Central Excise, Meerut, U.P., (2005) 181 E.L.T. 359 (S.C).

Relevant portion of the judgement in W.P.I.L. Ltd Vs. Commissioner of Central

Excise, Meerut, U.P. is extracted hereunder:-

“13. The contention of the appellant, in our opinion, therefore, is well-founded that both power driven pumps as well as parts of power driven pumps used for manufacturing of pumps within the factory were exempted from payment of excise duty. We are also satisfied that notifications were rescinded and consolidated notification was issued on March 1, 1994 with a view to reduce the number of notifications. No demand hence could have been made against the appellant in respect of parts of power driven pumps by issuing show cause notices. The submission of the appellant is well-founded that the Government was satisfied about the policy which was in vogue not to impose excise duty on parts of power driven pumps used in the factory premises for manufacture of power driven pumps and to clarify the position, the subsequent notification dated April 25, 1994 was issued. This is also clear if one reads at both the notifications Nos. 46/94 dated March 1, 1994 and 56/94 dated April 25, 1994. They read thus : -

....

14. In our opinion, therefore, the authorities were in error in upholding the demand and in directing the appellant to pay excise duty.

15. The learned counsel for the appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd (1995) 3 SCC 454. In that case, this Court held that a clarificatory notification



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would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.



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16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing notification No.46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory notification No.95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

47. Merely because the Appellant/Assessee has received the aforesaid interim dividend on **23.04.2002** during the **Financial Year 2002-2003**, assessable during the **Assessment Year 2003-04**, by which time the exemption under Section 10(33) of the Act was deleted would not mean that the aforesaid interim dividend income has to be taxed in the hands of the Appellant/Assessee as such dividend had already suffered tax on **22.03.2002** in the hands of the Company.

48. The exemption for income occurring from interim dividend under Section 10(33) of the Act was available to the Appellant/Assessee during the Financial Year 2001-2002 relevant to the **Assessment Year 2002-03** as the right to receive the interim dividend had accrued in the hands of the Appellant/Assessee, even though the amount was actually received only on **23.04.2002** during the **Financial Year 2002-**



03 relevant to the Assessment Year 2003-04.

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49. That apart, the invocation of machinery under Section 148 of the Act which culminated in the Assessment Order dated 28.06.2007 under Section 143(3) r/w Section 147 of the Act was inspired from the decision of the Hon'ble Supreme Court in the case of *CIT v. Kelvinator of India* reported in (2010) 320 ITR 561.

50. Therefore, we are inclined to allow the Tax Case Appeal and the substantial questions of law are answered in favour of the Appellant/Assessee not only on merits but also on the ground that the subsequent Assessment Order dated 28.06.2007 passed under Section 143(3) r/w Section 147 of the Act was contrary to the decision of the Hon'ble Supreme Court in the case of *CIT v. Kelvinator of India* reported in (2010) 320 ITR 561.

51. In the result, the Tax Case Appeal is allowed. No costs.

[S.S.S.R., J.] [C.S.N., J.]
16.04.2025

Index: Yes/No
Neutral Citation : Yes / No
AT

To
The Deputy Commissioner of Income Tax,
Circle I,
Chennai – 34.

S.S.SUNDAR, J.
and



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C.SARAVANA, J.

AT

Judgment in
T.C.A. No. 1044 of 2009

16.04.2025