

costs in the lower Court and to the costs of the preparation of the paper book in this appeal.

CHOTZNER J. agreed.

G. S.

*Appeal allowed.*

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COMMISSIONERS  
FOR THE  
PORT OF  
CALCUTTA  
"  
SURAJ MULL  
JALAN.

### INCOME-TAX REFERENCE.

*Before Rankin C. J., C. C. Ghose and Buckland JJ.*

VERNON MILWARD BASON, *In re.*\*

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Dec. 22.

*Income-tax—Super-tax—Income accumulating for a number of years and paid in a lump in a year if liable to income-tax and super-tax—Income-tax Act (XI of 1922), s. 16.*

Dividends not declared or paid for several years but subsequently paid in a lump sum, are income assessable for that year in which it was paid and are liable to income-tax and super-tax under section 16 of the Income-tax Act, 1922.

#### INCOME-TAX REFERENCE.

The assessee, Vernon Milward Bason, is a shareholder in three private limited companies, *viz.*, (1) Messrs. Murray & Co., Ltd., of Lucknow, (2) Messrs. Samuel Fitze & Co., Ltd., of Calcutta and (3) Messrs. Devereux & Co., Ltd. of Calcutta. Bason was never assessed in Bengal before the year 1925-26. Assessment proceedings were started on receipt of a letter by the Assistant Commissioner of Income-tax, Calcutta, from the Income-tax Officer, Lucknow, enquiring whether the assessee was assessed in Calcutta and stating that from the books of Murray & Co., Ltd., it was found that a sum of rupees one lakh was paid to him as accumulated dividends during 1924-25 and a sum of Rs. 1,097 on

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account of interest. Accordingly, in December, 1925, a notice was issued on him calling for a return of income under section 22 (2), which the assessee submitted in February, 1926. In this return, he did not show the above sums reported by the Income-tax Officer, Lucknow, as having been received by him. He was, however, assessed on the 25th March, 1926, under section 23 (4) on a total income of Rs. 1,32,110, including these sums, out of which Rs. 1,097 was assessed to income-tax and Rs. 82,110 to super-tax. Subsequently Bason filed an application under section 27 before the Income-tax Officer, District II (2), Calcutta, to reopen the assessment, and to give him an opportunity of placing all the facts before him. During the hearing of this application, he filed a copy of the resolution of an extraordinary general meeting of Messrs. Samuel Fitze & Co., Ltd., held in December, 1924, as the result of which he received one lakh of rupees, and contended that this sum represented portions of his income for the seven years from 1917 to 1923, and that the company had already paid both income-tax and super-tax and so he was not assessable again. The Income-tax Officer then cancelled the assessment under section 23 (4) and enquired from the Income-tax Officer, Lucknow, about the correctness of this statement. The latter replied that the payment of one lakh of rupees to the assessee was out of the accumulated profits of the company, which had paid income-tax and super-tax in the hands of the company and that it represented directors' fees, which were not charged to the revenue account by the company, and which had not yet been shown by any of the directors in their returns, as these were held in suspense by order of the Calcutta High Court. On receipt of this report, the Income-tax Officer passed orders under section 23 (3) maintaining the original

assessment, on the ground that the amount was a part of the income of the assessee in the year of receipt, *viz.*, 1924-25, and as such liable to assessment in 1925-26.

The assessee then filed an appeal under section 30 before the Assistant Commissioner of Income-tax, Headquarters, objecting to the assessment. He stated that certain shareholders calling themselves directors, with the object of appropriating more of the profits of the companies than they were entitled to, conspired together and passed an *ultra vires* resolution on the 6th November, 1917, calling certain irregular drawing „Directors' Bonus”, that he, who was a  $\frac{1}{8}$ th proprietor of the business of the companies and was entitled to  $\frac{1}{8}$ th of the profits, then filed a suit in the Calcutta High Court and, by injunction, held up six lakhs of rupees of the profits of the companies; that ultimately the suit was compromised and the aforesaid directors refunded to him one lakh of rupees, representing profits withheld from him for the seven years from 1917 to 1923, and on which income-tax and super-tax were paid in each of those years. The Assistant Commissioner rejected the appeal. Thereafter the assessee filed a petition under section 33/66 (2) before the Commissioner of Income-tax for review of the assessment, or, in the alternative for a reference to the High Court of certain questions of law arising out of the assessment. The Commissioner declined to interfere in review and asked the assessee to state the questions in a clearer form, which he did, and which are set out in the following High Court judgment.

The Commissioner of Income-tax stated the two questions for the opinion of the High Court, expressing his own opinion on the questions, his own opinion being unfavourable to the assessee.

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*Mr. H. D. Bose* (with him *Babu Ambika Pada Chaudhuri*), for the assessee. The directors illegally drew certain amounts as bonus each year from 1917 onwards and in 1920, and Bason, the petitioner, filed a suit in the Original Side of the High Court for injunction and for getting his share of the amount so drawn by the directors. The effect of the injunction was that thenceforward the alleged bonus was not paid to the directors, but the amount was kept in suspense in the accounts of the company, indicating, in effect, that the sum was kept separate to meet the said bonus. The difference was compromised and the petitioner was paid a lakh of rupees in a lump in 1924. This was really not income of a particular year and was not chargeable at all to super-tax.

The money was drawn as bonus from the company by the directors and it escaped assessment. But that is no reason why, when they refunded a portion of the amount, it should be assessed to super-tax.

*The Advocate-General (Mr. B. L. Mitter)* with him *Mr. S. M. Bose, Sr.*, for the Commissioner of Income-tax. The petitioner cannot object to the assessment of super-tax when he did not object to the payment of income-tax. See the last portion of section 56 of the Act.

[RANKIN C. J. That contention, I think, is hardly maintainable.]

Bason received the sum in a particular year and was assessable to tax for that sum for that year. The resolution of the company and the compromise made in the High Court suit entitled the petitioner to get the sum. It cannot and should not be distributed over several years. There is no such provision in the Act. It was assessable income in the hands of the petitioner and should be considered as his income for that year.

*Mr. H. D. Bose, in reply.*

*Cur. adv. vult.*

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RANKIN C. J. In this case the assessee, Mr. V. M. Bason, is a shareholder in three private companies, limited by shares. In 1917 and after, it would appear that these companies had some arrangement for pooling their profits. The three companies were: Samuel Fitze and Company, Limited, Murray and Company, Limited, and Devereux and Company, Limited.

On the 6th November, 1917, a resolution was passed by the directors of Samuel Fitze and Company, Limited, to the effect that after a dividend of not less than 10 per cent. had been paid out of the net pooled profits of the three companies on any year's working, a sum equal to one-third of the balance remaining of the said net pooled profits should be applied to the distribution of a bonus between the working directors in India. The assessee, as a substantial shareholder in each of these three companies, objected to this proposal and claimed that the resolution was *ultra vires* and illegal. It would appear that in the companies' books entries were made on the basis of the resolution, but the assessee having brought a suit and obtained an injunction, the special bonus proposed to be given to the working directors out of the companies' profits was not in fact handed over to the directors. The sums in dispute appear to have been held in suspense by the companies concerned pending a decision as to the validity of the resolution. In the end the matter was compromised, as appears from a resolution passed at an extraordinary general meeting of the shareholders of Samuel Fitze and Company, Limited, held on the 16th December, 1924, which shows that the bonus scheme was ultimately confirmed upon certain terms as regards the assessee of

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which the following is the chief: "The company  
" with the consent of the directors will pay Mr. Bason  
" one lakh of rupees, which shall be accepted by him  
" upon the basis that it represents the share of the  
" bonus claimed by him to 31st December, 1923, which  
" has been set aside for the directors in terms of the  
" resolution of the 6th November, 1917, which  
" Mr. Bason has objected to and in respect of which  
" these suits have been filed."

The present question has reference to this payment of one lakh of rupees. As the companies have in each year paid income-tax, together with companies' super-tax upon their profits, the assessee has not been required by the assessment now in dispute to pay income-tax upon this figure. But this figure has been included in computing his total income under section 16 of the Income-tax Act of 1922 and he has been assessed to super-tax in respect of this total income.

The assessee's real grievance is that if the resolution of the 6th November, 1917, which he regards as illegal, had not been passed and acted upon, he would in each of the years between 1917 and 1923 have received a larger dividend upon his share—a dividend upon which income-tax would not have been payable by him and which would not have been in amount sufficient in any year to expose him to super-tax.

The Commissioner of Income-tax has stated for the opinion of the Court two questions, namely—

"(i) Whether under the circumstances of the  
" present case the lakh of rupees could be said to be the  
" income of the petitioner for 1924-25 as dividends or  
" otherwise, and whether the whole or any portion of  
" it is assessable under the Income-tax Act.

"(ii) Whether the liability to assessment attached  
" to each of the directors, as he received each year for  
" several years his share of the bonus, either by

“actual withdrawal or by credit to his private account  
“with the companies, and whether this liability was  
“in any way modified or in any way transferred to the  
“petitioner by the subsequent payment to him of a  
“lump sum on the 26th July, 1924 (as recorded in the  
“terms of settlement in the High Court suit of 1920).”

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The only question which really requires to be answered is the first. The Commissioner of Income-tax has, in my opinion, correctly held that the sum in question was income assessable for 1925-26. No part of this sum was due or payable to the assessee until the companies declared it as dividend or otherwise dealt with it by making a payment thereof to Mr. Bason and the amount was part of his income in the year of receipt. It cannot be regarded, as the assessee has claimed, as representing the assessee's profits for previous years.

The second question, stated to us as framed by the assessee, appears to be altogether misconceived. The directors in fact did not receive this money and it never was taxed or taxable in their hands. The claim to assess the assessee upon this sum does not in any way rest upon any theory that the directors' liability to income-tax has been transferred to the assessee. The Commissioner of Income-tax has rightly held that the correct answer to this question is that it does not arise.

In my opinion, the assessment is in order; the questions referred to us should be answered in the sense which I have indicated and the assessee should pay the cost of this Reference.

GHOSE J. I agree.

BUCKLAND J. I agree.

S. M.