INCOME-TAX REFERENCE.

Before Costello and Lort-Williams JJ.

In re HUNGERFORD INVESTMENT TRUST, LTD.*

1934
July 20.

Income-tax—Company—Dividends in hands of shareholder—Indian Income-tax Act (XI of 1922), s. 14(2) (a).

Where there has been an assessment on the profits or gains of a company, dividends in the hands of a shareholder are not liable to taxation, although such dividends may have been, to some extent, paid out of profits or gains of the company which were free from taxation altogether.

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The assessee is a company, registered outside British India. It holds all the ordinary shares of Turner Morrison and Company, a company registered in British India.

With respect to their income for the year 1930, Turner Morrison and Company were exempted from income-tax on part of their income, namely, thirteen per cent. of the total income, which was not received in British India, and on a further part, namely, two per cent. of the company's total income, being interest on tax-free securities.

Similarly, for the year 1931, Turner Morrison & Co. obtained exemption, in respect of 25 per cent. of their total profits, under section 4 (*1*) of the Act and in respect of 1 per cent. of the total income under section 8.

Turner Morrison & Co. were duly assessed to income-tax both in respect of their profits for the years 1930 and 1931 respectively. In respect of the profits for the year 1930, Turner Morrison & Co. declared dividends and paid the sum of Rs. 3,00,000 to the assessee. For the year 1931, there was an *interim* dividend for Rs. 1,50,000 declared and paid.

*Reference under section 66 (*2*) of the Indian Income-tax Act, 1922, (No. 12 of 1933).

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The Income-tax Department held the assessee liable to pay tax on such part of the dividends in their hands, as corresponded to that proportion of the income of Turner Morrison & Co. as was held free from taxation. In other words, it was urged *inter alia* that 13 per cent. of Rs. 3,00,000 (=Rs. 39,000) and 25 per cent. of Rs. 1,50,000 (=Rs. 37,500) aggregating Rs. 76,500, in the hands of the assessee would be liable to taxation.

After the usual appeals to the Assistant Commissioner and the Commissioner of Income-tax, Bengal, the assessee propounded four questions of law to be referred to the High Court. These are set out in the judgment of Costello J.

The Commissioner duly stated a case on the following questions :—

(1) The assessee's income in assessment having included dividends declared on 16th April, 1931 and 3rd November, 1931, by a company, whose profits of 1930 and 1931 were found to include specified sums, to which the Act did apply : in the assessee's hands, is such portion of dividends, as the specified sums bear to the aggregate of all profits in 1930 and 1931, wholly outside the Act, in accordance with section 4 ?

(2) The assessee's income in assessment having included dividends declared on 16th April, 1931 and 3rd November, 1931, by a company whose profits of 1930 and 1931 were found to include specified sums, to which, in accordance with section 4, the Act did not apply ; and the said company having been assessed in respect of profits to which the Act did apply : is such proportion of the dividends, as the specified sums bear to the aggregate of all profits in 1930 and 1931 respectively, exempted from taxation to ordinary income-tax in accordance with section 14(2) ?

Other facts of the case appear from the judgment.

Page for the assessee. Dividends on which tax has been assessed cannot be made liable to tax in the hands of the shareholders. If the moneys had never been brought into British India, and, therefore, had not been liable to tax, then dividends paid out of such moneys are equally not liable to tax, the company having been assessed to tax. Section 14 (*2*) (a) is quite clear.

Advocate-General, *Roy* (with him *Pal*) for the Income-tax Department. In section 14 (*2*) (a) the word "dividends" must be read as "share of profit" [*cf* : sections 20 and 48 and Form under rule 14.]

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Otherwise, there may be cases in which after refund has been paid to shareholders, who have no taxable income, the Government may be actually out of pocket. For instance, a company makes and distributes profits, Rs. 45,000, out of which Rs. 30,000 was not brought into British India and was so exempted from taxation. Suppose each shareholder was entitled to a refund to tax paid, then after refund has been paid on Rs. 45,000 the Government will actually have paid more than it received.

Ordinary meaning of the word "dividend" is a "share of profits" (*vide* Halsbury Vol. V. § 639).

Page in reply.

COSTELLO J. This matter came before the Court on a reference under section 66 (*2*) of the Income-tax Act (XI of 1922)—the Commissioner of Income-tax having been required by a company, known as the Hungerford Investment Trust Limited, to refer for the decision of this Court certain questions which are set out in annexure "A" of the case. The question originally propounded by the applicant were stated in this form:—

(1) Is the sum of Rs. 76,536 which has been assessed to tax in the hands of Messrs. The Hungerford Investment Trust, Limited, liable to taxation in their hands, or at all ?

(2) In view of the fact that the said sum is a portion of the dividends received by Messrs. The Hungerford Investment Trust, Limited, from companies whose profits and gains have been assessed to income-tax, is not the said sum exempt from taxation in the hands of Messrs. The Hungerford Investment Trust, Limited, by reason of the provisions of section 14, sub-section (2) (a) of the Indian Income-tax Act, 1922 ?

(3) Where the profits or gains of a company have been assessed to income-tax, are not all dividends paid by that company exempt in the hands of a shareholder irrespective of the income which has been assessed ?

(4) In view of the fact that a portion of profits or gains of certain companies were not received in or brought into British India and as such were exempt from liability to taxation in the hands of such companies, can Messrs. The Hungerford Investment Trust, Limited, be assessed on a similar amount merely because they have been paid dividends to that amount by the respective companies ?

What we are now concerned with, however, is the second question, stated by the Commissioner, in paragraph 2 of the statement of case (page 1 of the paper-book). The assessment in dispute is that for the tax

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year 1932-33. The Hungerford Investment Trust, Limited, is a company, registered outside British India, and it holds the whole of the ordinary share capital in a company known as Messrs. Turner Morrison and Company, Limited, which is a company registered in British India. For the year 1930, Messrs. Truner Morrison and Company, Limited, on the 16th April, 1931, declared a final dividend amounting to three lakhs of rupees and on the 3rd of November, 1931, that company declared an *interim* dividend for the year 1931, amounting to Rs. 1,50,000. These dividends were all paid, that is to say, the total sums were paid to The Hungerford Investment Trust, Limited, and it appears that, with the exception of some insignificant amount in addition, that sum represents the whole of the income of The Hungerford Investment Trust, Limited, for the year 1931-32 upon which it was assessed for the tax year 1932-33. Messrs. Turner Morrison and Company's assessment had been made on the basis of its profits for the year 1930 and that company was held under the provisions of section 4 (*1*) of the Income-tax Act, 1922, to be exempt from tax to the extent of Rs. 39,000 which is 13 per cent. of its total profits and further the amount of the profits or gains made by Messrs. Turner Morrison and Company, Limited, but not received in India were also held to be exempt. A sum equivalent to Rs. 6,000, that amount being 2 per cent. of its total profits, was also held to be exempt under the proviso contained in section 8 of the Act. Accordingly, when Messrs. Turner Morrison and Company, Limited, were assessed for the tax year 1932-33 in respect of its profits for the year 1931, it was held to be exempt from taxation under section 4 (*1*) to the extent of Rs. 37,500, that is to say, 25 per cent. of its total profits and under the proviso to section 8, to the extent of Rs. 1,500 which is one per cent. of its total profits. The two exemptions under the provisos to section 8 amounted to a total sum of Rs. 7,500 and the two exemptions under section 4 (*1*) to a total sum of Rs. 76,500. Messrs. Turner Morrison and Company,

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Limited suffered taxation—if I may use the expression—on the residue, that is to say, in respect of the profits out of which the first dividend was paid, to the extent of a sum of Rs. 2,55,000 which is 85 per cent. of its total profits and in respect of the profits out of which the *interim* dividend was paid to the extent of Rs. 1,11,000 which is 74 per cent. of its total profits for the year in question. Messrs. Turner Morrison and Company, Limited, were not taxed either in regard to the sum of Rs. 7,500 by reason of the proviso to section 8 or in respect of the sum of Rs. 76,500 in regard to which they were exempted by reason of the provisions of section 4 (*1*) of the Act. The question before the Court is, therefore, only concerned with this sum of Rs. 76,500 which passed from Messrs. Turner Morrison and Company, Limited, into the hands of The Hungerford Investment Trust, Limited, as part of the total dividends paid to them on the 16th April, 1931 and 3rd November, 1931.

The Income-tax authorities made an assessment upon Messrs. Hungerford Investment Trust, Limited, designed to bring in for the purpose of taxation this sum of Rs. 76,500. They did not seek to make The Hungerford Investment Trust, Limited, liable in respect of the sum of Rs. 7,500. The method by which the assessment was made and the figure arrived at is shown in annexure "B" which is a copy of the assessment order made on The Hungerford Investment Trust, Company, for the tax year 1932-33.

The assessees, thereupon, put forward the questions which, as I have already said, are contained in annexure "A". Put quite shortly, the main point, which was raised by the assessees in the objection which they took as regards the assessment to income-tax, amounts to this, namely, whether they are or are not liable to pay any income-tax on the sum of Rs. 76,500 even though that sum has not been taxed as at all as part of the profits or gains of Messrs. Turner Morrison and Company from whom they have received that sum as part of the larger sum they received by way of distribution of dividends. When

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the matter was before this Court on the last occasion, the Court was differently constituted and the Court, by a majority, thought it desirable to have a further finding of fact from the Commissioner of Income-tax in order to make clear the question whether the whole or any part, and if a part, what part, of the dividends paid to the assessees to the extent of Rs. 76,500 had been paid out of profits or gains of Messrs. Turner Morrison and Company, which had at any time been assessed to income-tax. We have now before us the answer given by the Commissioner on that point. In it, the Commissioner says :—

> The assessee admits that it is impossible to prove that any of those dividends have been paid out of such profits and in the circumstances is prepared to admit that no part of this sum was paid out of such profits.

Then he adds,—

> My finding on the question is in accordance with the assessee's admission.

The admission referred to in the finding of the Commissioner comes to this that the sum of Rs. 76,500 had never been taxed at all, while it lay in the hands of Messrs. Turner Morrison and Company, as part of their total profits and gains. The position, therefore, is that Messrs. Hungerford Investment Trust, Limited, received a total sum by way of dividends, which included in it the sum of Rs. 76,500 which had not been taxed before it came into their hands, and although there were four questions propounded by the applicant, they all, for our present purpose, resolve themselves into the simple question of whether The Hungerford Investment Trust, Limited, are liable to pay tax in respect of that sum of Rs. 76,500 or whether, on the other hand, they are protected by reason of the provisions of section 14 (2) (a) of the Income-tax Act, 1922. That is the question which we have to answer in this case.

The position now is very little different, if at all, from what it was when the matter was before this Court on the previous occasion. The only difference is that it is now definitely established from the finding of the Commissioner that the sum of Rs. 76,500

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has not in fact been subject to tax at all. A great deal of argument was put forward on the previous occasion as to the origin and the method of dealing with various sums of money received by Messrs. Turner Morrison and Company, as part of the profits and gains of their business operation. In my opinion, all that was not very material. The sole question is whether terms of section 14 (2) (a) are sufficiently precise and definite to afford to the assessees the protection which they claim. The words of the sub-section are these :—

> The tax shall not be payable by an assessee in respect of—
>
> (a) any sum which he receives by way of dividends, as a shareholder in a company, where the profits or gains of the company have been assessed to income-tax.

Quite clearly, this sum of Rs. 76,500 was received by the assessees by way of dividends, as a share-holder in a company, namely, as a share-holder in the company known as Messrs. Turner Morrison and Company. There is no doubt, in one sense, at any rate, that the profits or gains of that company had been assessed to income-tax. I have already endeavoured to explain to what extent those profits or gains were so assessed. As regards the sum earned in 1930, which provided the dividend declared on the 16th April, 1931, Messrs. Turner Morrison and Company were taxed, as I have stated, to the extent of 85 per cent. of their total profits or gains; and as regards the total sum out of which the dividend of Rs. 1,50,000 was declared, on the 3rd November, 1931, Messrs. Turner Morrison and Company were taxed to the extent of 74 per cent. It follows, therefore, in my opinion that this was a case where the company which paid the dividend was in the position of having had some profits or gains assessed to income-tax. The only further question and indeed the crucial question in the whole matter is whether the section implies that unless the whole income of a company has been assessed or made chargeable to income-tax the section will not operate for the protection of a share-holder—whether an individual or a company—receiving a dividend

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paid out of the total profits or gains of the other company.

It is argued by Mr. Page on behalf of the assessees, the applicants before us, that it is sufficient for the purpose of this section that Messrs. Turner Morrison and Company were assessed in respect to the whole of that part of their profits or gains which were liable to tax. It is conceded on behalf of the Commissioner that in the one instance 15 per cent. and in the other 26 per cent. of the total profits or gains were beyond the reach—if I may use the expression—of the income-tax authorities altogether. Therefore, it may be said that in regard to those proportions of the profits there could not be assessment because that portion was not liable to income-tax at all.

The learned Advocate-General, on behalf of the income-tax authorities, has asked us to take a comprehensive view of the whole scheme of the Income-tax Act for the purpose of interpreting the real meaning of section 14 (2) (a), and in particular he has referred us to section 48 which provides for a refund to a shareholder who is not liable to income-tax at the rate at which tax has been paid by the company from whom he has received his dividend or who is not liable to income-tax at all by reason of his total income being below the taxable amount. The learned Advocate-General has also referred us to section 20. That section in effect provides the machinery whereby a refund can be claimed because it requires that the principal officer of every company shall, at the time of a distribution of dividends, furnish, to every person receiving a dividend, a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed. By rule 14 the form of the certificate is laid down and the form runs thus :—

> We hereby certify that income-tax on the entire (or such part as is liable to be charged to Indian income-tax of the) profits and gains of the company, of which this dividend forms a part, has been or will be duly paid by us to the Government of India.

The learned Advocate-General has argued that the certificate is only wide enough in its terms to cover the situation, on the one hand, where the income-tax has been paid on the entire profits or gains, or on the other, where the income-tax has only been paid on such part as is liable to be taxed. The extent of those two alternative situations must be taken to indicate, says the learned Advocate-General, that the Act as a whole contemplates a situation where the dividends are paid out of the sum the whole of which has suffered tax in the case of a company which has distributed it by way of dividends. We are asked to say that the real meaning and intent of section 20 and the subsequent sections and, in particular, section 48 is such as to warrant and indeed entail the conclusion that section 14 (*2*) (a) ought to be construed as meaning that tax will only not be payable by an assessee in respect of any sum he has received by way of dividends as a shareholder in a company where the whole of that sum is included in,that is to say, has been paid out of, the profits or gains of the company the whole of which has already been assessed to income-tax. That would be, in our opinion, to read into the section something which is not there. We think we ought not in effect to add to the plain words of this section by reference to the supposed implications of other sections of the Act. It may be that there are inconsistencies between section 14 (*2*) (a) and what is implied in the subsequent sections 20 and 48. That may be the position; but we do not think we ought to take the form of the certificate as giving an indication of what is the meaning of an antecedent section of the Act itself. Therefore, giving to the words of section 14 (*2*) (a) their plain meaning, and without adding to or subtracting from the precise words of the section itself, we are bound to come to the conclusion, whatever the result may be, that there has been an assessment on the profits or gains of the company which is sufficient to secure to the share-holders the whole of the dividends, even though those dividends were in fact to some extent paid out of profits or gains in

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the hands of the paying company which were free from taxation altogether. No doubt the intention of the legislature was to provide against double taxation—taxation in the hands of the company which passed the dividend and taxation in the hands of the share-holders who received the dividend. We have, however, on many occasions expressed the view that it is undesirable and indeed unsafe, for this Court, or any other court, in an endeavour to meet a particular situation to vary the words of a statutory enactment for the purpose of giving effect to what may presumably have the intention of the legislature. I hold that it is always the duty of the court to interpret the language of the legislature as it stands and neither to add to it nor to take away from it. In the circumstances, I am bound to say that from the wording of the section as it stands the profits or gains of Messrs. Turner Morrison and Company had been assessed to income-tax in the relevant year and that, therefore, the sums received by Messrs. Hungerford Investment Trust, Limited, as share-holders in that company are sums on which tax should not be payable. We do not feel it necessary to answer *seriatim* all the questions propounded by the applicants in annexure "A", because, in my opinion, our answer in the affirmative to the second question "Is any portion of the dividends "received by Messrs. Hungerford Investment Trust, "Limited,.....exempt from taxation.....by reason of "the provisions of section 14 (2) (a) of the Income-tax "Act" is sufficient to cover the other questions also.

Each party will bear its own costs in the previous proceedings and the assessees will have their costs of this appeal.

LORT-WILLIAMS J. I desire to adopt some of the words and observations of my learned brother Mr. Justice Panckridge contained in the concise and apposite judgment which he delivered when the matter was before this Court on a former occasion. There is nothing in the Act to show that the liability of a share-holder to pay income-tax, on dividends

received by him, depends in any degree upon the origin or nature of the profits which enable the company to pay the dividends or upon the character of the fund out of which payment is in fact made.

The question is purely one of construction of section 14 (*2*) (a) of the Act. The first matter to be decided is, whether the profits or gains of the company, in this case, were assessed to income-tax, within the meaning of the sub-section. If they were, then no income-tax is payable on the dividend received by the share-holder. If they were not so assessed, then the share-holder is liable to pay income-tax, not only on that part of the dividend which the Commissioner thinks should be assessed but on the entire dividend. There is no other section of the Act under which it can be suggested that he escapes liability.

The result, as pointed out by my learned brother, Mr. Justice Panckridge, of accepting the arguments raised on behalf of the income-tax authorities would be that, if any fraction of a company's profits have not been taxed, the share-holder, who has received a dividend from that company, would be unable to avail himself of the provisions of section 14 (*2*) (a). In other words, what is contended on behalf of the income-tax authorities is that, unless the whole of the profits or gains of the company have been assessed, the dividend-receiver cannot avail himself of the provisions of the section. The result would be that the section would only be available to the share-holder, in this or in similar cases, when the whole of the profits or gains of the company were, in fact, assessable to income-tax.

Such a result need only be stated to show that this cannot possibly have been intended by the legislature, for, as pointed out by my learned brother, in every case where a bank or an insurance company hold any tax-free securities, the share-holders of such companies would find that their dividends were assessable to income-tax. Moreover, the conclusion

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would result in the assessable portion of the company's profits being made liable for the tax twice—once, as profits in the hands of the company, and for a second time as income of the share-holder.

I agree that this interpretation of the section may enable certain individuals or companies to escape payment of income-tax, which it is the obvious intention of the legislature that they should pay. But it is not for this tribunal to remedy that fault. We have to declare the law as it appears in the Income-tax Act and must leave the legislature to consider what steps they may think it necessary to take, by way of amendment of the Act, so as to provide for cases similar to this.

I agree with my learned brother in the answer he has given to the questions referred to us by the assessee in annexure "A".

Attorneys for assessee: *Orr Dignam & Co.*

Advocate for Income-tax Department: *Radhabinode Pal.*

S. M.