

P. SARADA

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v.

COMMISSIONER OF INCOME TAX (CENTRAL)
MADRAS

DECEMBER 9, 1997

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[SUHAS C. SEN AND K. VENKATASWAMI, JJ.]

Income Tax Act, 1961 : Section 2(22)(e).

Income Tax—Deemed Dividend—AY 1973-74—Assessee was shareholder in a private limited company and had a running account with it—Assessee overdraw from this account—Held: Such overdrawal amounted to deemed dividend—Subsequent repayment or adjustment, immaterial.

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The appellant-assessee was a shareholder in a private limited company and had a running account with it. During the accounting year relevant to the assessment year 1973-74 between the period 3.7.1972 and 22.3.1973 the assessee had withdrawn a total sum of Rs. 93,027. At the material time the assessee did not have any credit balance in her account with the company. M, who owed some money to the assessee, wrote a letter to the company directing it to make available to the assessee a sum of Rs. 1 lakh from out of his account. However, M's account was not debited till the very last day of the accounting year. The Income Tax Officer (ITO) treated the aforesaid excess withdrawal as deemed dividend under Section 2(22)(e) of the Income Tax Act, 1961. The appellant-assessee contended that the excess withdrawal had not been made from the company's account but from the amount standing to the credit of M in the books of the company and, therefore, the said excess withdrawal could not be treated as deemed dividend. The assessee's appeal to the Appellate Assistant Commissioner was dismissed. However, on further appeal, the Tribunal upheld the case of the assessee. The High Court answered the reference in the negative and in favour of the Revenue. Hence this appeal.

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Dismissing the appeal, this Court

HELD : 1.1. The withdrawals made by the appellant from the company amounted to grant of loan or advance by the company to the shareholder. The legal fiction under Section 2(22)(e) of the Income Tax

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A Act, 1961 came into play as soon as the company paid the monies to the appellant. The assessee must be deemed to have received dividends on the dates on which she withdrew the aforesaid amounts of money from the company. The loan or advance taken from the company may have been ultimately repaid or adjusted but that will not alter the fact that the assessee, in the eye of law, had received dividend from the company during the relevant accounting year. [329-E-F]

Smt. Tarulata Shyam v. CIT, 108 ITR 345, relied on.

C 1.2. In the instant case, the assessee made excess withdrawals on various dates between 3-7-1972 and 22-3-1973 when the account of M had not been debited. The assessee's account was consequently overdrawn. On the very last day of the accounting year some adjustment was made but that will not alter the position that the assessee had drawn a total amount of Rs. 93,027 between 3-7-1972 and 22.3.1973 from the company when her account with the company did not have any credit balance at all. That means these advances made by the company to the assessee will have to be treated as deemed dividends paid on the dates when the withdrawals were allowed to be made. Subsequent adjustment of the account made on the very last day of the accounting year will not alter the position that the assessee had received notional dividends on the various dates when she withdrew the aforesaid amounts from the company. [330-A-C]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 649 (NT) of 1987.

F From the Judgment and Order dated 3.7.84 of the Madras High Court in T.C. No. 1258 of 1979.

T.A. Ramachandran and Ms. Janaki Ramachandran, for the Appellant in C.A. No. 649/87 and C.A. No. 3894-95/84.

K.N. Shukla, K.N. Nagpal and B. K. Prasad for the Respondent.

G The Judgment of the Court was delivered by

H SEN, J. The appellant, Miss P. Sarada, is a major shareholder of Messers Universal Radiators Pvt. Ltd. (hereinafter referred to as "the company"). It is a company in which public were not substantially interested. While completing the assessment of the appellant for the assessment

year 1973-74, the Income Tax Officer found that during the period 3.7.1972 to 22.3.1973 she had withdrawn a total sum of Rs. 93,027 from the company. The appellant had a running account with the company. At the material time she did not have any credit balance in her account with the company. This excess withdrawal was treated by the Income Tax Officer as deemed dividend under Section 2(22)(e) of the Income Tax Act on two grounds : (1) The assessee had no credit balance in her accounts with the said company at the material time; and (2) that there was sufficient accumulated profits of the company from which the excess withdrawal was made by the assessee. The Income tax Officer included this amount of Rs. 93,027 in the computation of the appellant's income. The assessee's appeal to the Appellate Assistant Commissioner was dismissed. However, on further appeal, the Tribunal upheld the case of the assessee.

The Tribunal held that the withdrawals made by the appellant will have to be taken as paid out of the money lying to the credit of another shareholder Shri A.C. Mahesh and not out of the accumulated profits of the company. A letter dated 3.4.1972 written by Shri A.P. Madhavan, the father of the minor Mahesh, was relied upon by the Tribunal. In that letter Madhavan had directed the company to make available to the assessee Miss P. Sarada a sum of Rs. 1 lakh from out of his account. The Tribunal found that Mahesh owed some money to the assessee and as Mahesh had directed repayments of the amount due to the assessee from out of his credit balance in the company, the withdrawals made by the assessee had to be treated as withdrawals from the account of Mahesh and not from the accumulated profits of the company.

At the instance of the Commissioner of Income Tax, the following question of law was referred to the High Court under Section 256(1) of the Income Tax Act.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the withdrawals made by the assessee from Messers Universal Radiators Private Limited totalling Rs. 93,027 cannot be assessed under Section 2(22)(e) of the Income-Tax Act, 1961 for the year 1973-74."

The High Court answered the question in the negative and in favour of the Revenue.

A The High Court took note of the fact that the accounting period for the relevant assessment year 1973-74 was 1.4.1972 to 31.3.1973. The assessee was a substantial shareholder of the company and was drawing funds from the company till 22.3.1973. As a result of various withdrawals made by the assessee, her credit balance had been entirely wiped out and in fact her account with the company showed excess withdrawal of a sum of Rs. 1,831.14 as on 22.3.1973. In spite of this debit balance the assessee between 3.7.1972 to 22.3.1973 on fourteen different dates withdrew a total a sum of Rs. 93,027. The particulars of the withdrawals are as under :

	3.7.72	Rs. 1,831.14 (Excess withdrawal)
C	3.8.72	Rs. 5,000.00
	2.9.72	Rs. 5,000.00
	12.9.72	Rs. 7,998.00
D	3.10.72	Rs. 5,000.00
	3.11.72	Rs. 5,000.00
	1.12.72	Rs. 5,000.00
E	11.12.72	Rs. 7,998.00
	18.12.72	Rs. 4,749.00
	18.12.72	Rs. 8,522.00
F	2.1.73	Rs. 5,000.00
	3.2.73	Rs. 5,000.00
	5.3.73	Rs. 5,000.00
G	9.3.73	Rs. 7,999.00
	17.3.73	Rs. 10,000.00
	22.3.73	Rs. 3,930.00
H		<u>Rs. 93,027.00"</u>

According to the assessee, the withdrawals had not been made from the company's account but from the amount standing to the credit of Mahesh in the books of the company. The High Court pointed out that the alleged letter dated 3.4.1972 was given effect to by the company only on 31.3.1973 by debiting a sum of Rs. 1 lakh from the account of Mahesh and crediting it to the account of the assessee. But the assessee had steadily and regularly withdrawn monies from the company between 3.7.1972 to 22.3.1973. These withdrawals were not made by debiting the credit balance of Mahesh which remained intact till 31.3.1973. The High Court concluded that the various withdrawals made by the assessee were from the company's accumulated profits.

We do not find any fault with the reasoning of the High Court.

Section 2(22)(e) as it stood at the material time defined dividend to include "any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to a shareholder, being a person who has a substantial interest in the company to the extent to which the company possesses accumulated profits". In the instant case there is no dispute that the appellant had a substantial interest in the company. The nature of the company is also not in dispute.

From the facts as stated hereinabove, it appears that the withdrawals made by the appellant from the company amounted to grant of loan or advance by the company to the shareholder. The legal fiction came into play as soon as the monies were paid by the company to the appellant. The assessee must be deemed to have received dividends on the dates on which she withdrew the aforesaid amounts of money from the company. The loan or advance taken from the company may have been ultimately repaid or adjusted but that will not alter the fact that the assessee, in the eye of law, had received dividend from the company during the relevant accounting period.

It was held by this Court in the case of *Smt. Tarulata Shyam & Ors. v. Commissioner of Income Tax, West Bengal*, 108 ITR 345 that the statutory fiction created by Section 2(6A)(e) of the Indian Income Tax Act, 1922 would come into operation at the time of the payment of advance or loan to a shareholder by the company. The legislature had deliberately not made the subsistence of the loan or advance, or its remaining outstanding, on the

- A last date of the previous year relevant to the assessment year a prerequisite for raising the statutory fiction.

In the instant case, excess withdrawals were made by the assessee on various dates between 3.7.1972 to 22.3.1973 when the account of Mahesh had not been debited. The assessee's account was consequently overdrawn.

- B On the very last day of accounting year some adjustment was made but that will not alter the position that the assessee had drawn a total amount of Rs. 93,027 between 3.7.1972 to 22.3.1973 from the company when her account with the company did not have any credit balance at all. That means these advances made by the company to the assessee will have to
- C be treated as deemed dividends paid on the dates when the withdrawals were allowed to be made. Subsequent adjustment of the account made on the very last day of the accounting year will not alter the position that the assessee had received notional dividends on the various dates when she withdrew the aforesaid amounts from the company.

- D A point was taken that the High Court has reappraised the fact and has disbelieved the letter dated 3.4.1972 which was accepted as genuine by the Tribunal. It was contended that it was not open to the High Court to doubt this letter.

- E This argument is misconceived. The High Court has proceeded on the basis of the facts found by the Tribunal. There is no dispute that the assessee had withdrawn various sums of money between 3.7.1972 and 22.3.1973 when she did not have any credit balance with the company. In order to pay her these sums of money the account of Mahesh was not debited at all. The entire credit balance of Mahesh stood as it was till the
- F very last day of the accounting year. On these facts found by the tribunal, the High Court concluded that it was not possible to hold that the assessee was paid money out of the funds lying to the credit of Mahesh. The High Court decided the case entirely on the basis of the facts found by the tribunal.

- G We find no merit in this appeal. The appeal is dismissed with no order as to costs.

V.S.S.

Appeal dismissed.