

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CASE ANALYSIS OF LAXMIPAT SINGHANIA VS **COMMISSIONER OF INCOME-TAX,** **(AIR 1969 SC 501) CIVIL APPEAL NO. 1188 OF 1967**

AUTHORED BY - MS. MAARIA LAKDAWALA (A017)

YEAR: BBA-LLB 4TH YEAR, SEMESTER-VII

RESEARCH PAPER SUBMITTED

TO THE SVKM'S NMIMS, NAVI MUMBAI

KIRIT P. MEHTA SCHOOL OF LAW

FOR BBA LLB [HONS.]

ACKNOWLEDGEMENT

I would like to express my deep and sincere gratitude to Prof. CA. Rajlakshmi who guided me throughout the whole process of writing this paper. I would like to thank her for giving me an opportunity to research on the present topic and for helping me carry out our research in an organized manner and for answering any doubts or queries I have had throughout the course of the research.

Thankyou Ma'am.

RESEARCH OBJECTIVE

- Understanding the concept of Double Taxation in India and relevant sections under the Income Tax Act, 1961.
- Analysing the case of Laxmipat Singhania vs Commissioner Of Income-Tax, U.P. (AIR 1969 SC 501).

INTRODUCTION TO THE CONCEPT OF DOUBLE TAXATION

When an income is subject to double taxes, this comes under the concept of double taxation.

- Double Taxation can be either economically or juridical Double Taxation.
- ***Economic Double taxation*** happens when a portion of an income is taxed twice in the same nation, in the possession of two different people.
- If, on the other hand, the same person is subjected to both foreign and domestic taxes on money earned outside of India, this is referred to be ***Juridical Double Taxation***. In this unusual circumstance, the taxpayer is duly burdened by the double taxation on their income.

Double taxation primarily has the following two types:

- ***Double taxation on Corporate Profits*** through both corporation and dividend taxes is referred to as corporate double taxation (imposed on dividend pay-outs). Only entity C-Corps i.e. “Corporations” are subjected to double taxation. A loophole for avoiding double taxation could be not allotting dividends to shareholders are that is an essential for double taxation.
- ***International Double Taxation*** : Taxation in the country where it is earned and taxation in the country where the investor resides. This is known as international double taxation.

Quite often individuals are subjected to tax in both your home country and the place you reside if you live abroad and earn money in India. In order to prevent double taxation, India has adopted the DTAA policy.

India enters into a tax agreement with another nation in order to prevent double taxes. An individual can avoid paying taxes twice by using this treaty. DTAA's can be either specific agreements that exclusively address particular categories of income or comprehensive agreements that include all forms of income.

Relief from Double Taxations is provided u/s 90 and u/s 91 of the Income Tax Act, 1961 for income earned outside of India. To simplify this -income earned out of India for Non-Residents is

income that is not taxable, Income earned outside of India for Residents and if it is country that India has an DTAA (Double Taxation Avoidance Agreement) with it is governed u/s 90 and u/s 90A and if it happens to be a country that does not have DTAA (Double Taxation Avoidance Agreement) with India it is governed by u/s 91¹.

INTRODUCTION TO FACTS OF THE CASE:

Laxmipat Singhania vs Commissioner Of Income-Tax, U.P. (AIR 1969 SC 501)

- In the present case - Atherton West and Firm Ltd., Kanpur, further referred to as "company" failed to declare a dividend at its general meeting on April 22, 1939, in an amount equal to 60% of its assessable income from the previous year, amount of income tax and super tax the company that had to be paid in relation to that of the taxable income was reduced.
- Mr. Laxmipat Singhania the appellant in the present case owned 1,333 shares of the company valued at Rs. 23,328/- only.
- By order dated 18.08.1940, the Income-tax Officer exercised his authority under Section 23A of the Indian Income-tax Act², as it was then in effect, and directed the company that Rs. 3,32,691 be deemed to have been divided accordingly among the shareholders as of on the date of the company's general meeting.
- On 12.12.1941, The Income-tax Officer identified the shares of the various shareholders, but did not give effect to the order by inserting the proportionate shares in the amount of the deemed income in the shareholders' individual assessments for the relevant assessment year.
- On 24.04.1942, a General Meeting was held by the company and a resolution to credit each shareholder's account with their respective part of the Rs. 2,98,000 in reserve would be made available as a dividend to the shareholders.
- In accordance with the resolution of the General Meeting held on 24. 04.1942 , Rs. 23,328 were credited to the account of the appellant, who owned 1,333 firm shares.
- The Income-tax Officer brought the amount distributed by the company to be taxed in the proceedings for assessment of the appellant's income for the year 1943–1944. The appellant contended that the income was not liable to be taxed in the year 1934-1944

¹ Income Tax Act, 1961

² 1922

however the Income-Tax Tribunal was pleased to dismiss the contention of the appellant and upheld the order of the Income Tax Officer.

- The appellant approached the Hon'ble Allahabad High Court u/s 66(1) of the Income Tax³, the Hon'ble Allahabad High Court held the decision of Income Tax Officer and Income-Tax Tribunal to be correct stating that although on 12.12.1941 an order u/s 23A⁴ was passed in the assessment year 1939-1940, the dividend credited in the account of the assessee i.e. Rs. 23,328/- in the year 1943-1944 would be liable to tax u/s 16(2)⁵.
- Aggrieved by the order passed by the Hon'ble Allahabad High Court, the Income-Tax Tribunal and the decision of the Income Tax Officer the appellant has approached the Hon'ble Supreme Court of India to seek remedy.

ISSUES RAISED

Owing to the above explained facts and circumstances the Hon'ble Supreme Court of India, discussed, deliberated, analysed and gave their decisions on the following issues: -

- Whether the decision by the Hon'ble High Court was proper in its order to uphold that even if assessee has been assessed u/s 23A in the accounting period of the assessment year 1939-1940, he would still be liable to pay tax u/s 16(2) of the Income Tax Act, 1922 in the assessment year 1943-1944.*

The Supreme Court assessed the direction of the Hon'ble Allahabad High Court and gave a transparent answer to clear this issue as it forms the crux of the present case.

- Whether u/s 23 A the law can be interpreted as to where Double Taxation is allowed under Income Tax Act, 1922 as a fundamental rule of Income Tax Law.*

This issue clears the underlying foundation of the income tax act on double taxation and its provision, the Hon'ble Supreme Court has deliberated and answered this question in whole in the present case.

The paper deals substantially with both the issue no i and issue no ii.

³ 1922

⁴ Income Tax Act, 1922

⁵ Income Tax Act, 1922

CONTENTIONS OF BOTH THE PARTIES

The Hon'ble High Court upheld that even if assessee has been assessed u/s 23A in the accounting period of the assessment year 1939-1940, he would still be liable to pay tax u/s 16(2) of the Income Tax Act, 1922 in the assessment year 1943-1944, aggrieved by the order of the Hon'ble Allahabad High Court, the Income-Tax Tribunal and the decision of the Income Tax Officer the appellant has approached the Hon'ble Supreme Court of India.

The appellant contended before the Hon'ble Supreme Court of India that his proportionate share of the amount deemed to be distributed was subject to taxation in the assessment year 1940–1941; however, the Commissioner countered and contended that because the dividend was not subject to taxation in the year in which it was deemed to be distributed, the appellant's share of the amount actually distributed was subject to assessment in the assessment year 1943–1944.

The Commissioner further contended that the dividend is assumed to have been dispersed among the shareholders as of the date of the general meeting when the Income-tax Officer issues an order against the company under the circumstances outlined in Section 23A(1)⁶.

The distribution is completely nominal, but the Income-tax Officer is required by the stated clause in Section 23A to subject the proportionate part of each shareholder to tax in the applicable year of assessment. The dividend is presumed to be distributed among the shareholders on the day of the general meeting, and the proportionate share must be included in each shareholder's total income for the year in which the date falls.

The learned Attorney-General of India put special emphasis on Section 23(A) sub section 4 that read as- *“Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.”*

The appellants further contended that -Unless expressly allowed otherwise, it is a fundamental tenet of tax law that income cannot be taxed more than once. Again, the income-tax officer is not

⁶ Income Tax Act, 1922

permitted to disregard the accrual of money to the assessee that is required to be included in the total income of a given year in order to afterwards tax the income as income of a different year on the basis of receipt.

JUDGEMENT

The Hon'ble Supreme Court observed circumstances, analysed and interpreted sections 16(1), 16(2), 23A sub section 4 of the Income Tax Act, 1922 and held that:-

It was deemed that the company had divided the dividend as of April 22, 1939. Each shareholder's proportionate share of the dividend was required to be included in the previous year's total income of each share holder, dated April 22, 1939. The money, however, was never included in the assessee's overall revenue for that year; rather, it was sought to be taxed when, on May 29, 1942, a portion of the company's reserve was actually distributed by crediting the shareholders' accounts with their respective shares.

The purpose of sec 23 sub clause 4 is to prevent the double taxation of the same income; as a result, any actual distribution of the dividend will not be subject to taxation if tax has been paid by the assessee in respect of his proportionate share in the dividend that is deemed to have been distributed as a result of an order under Section 23A.

The clause neither means nor implies that, if the proportionate share of the shareholder in the deemed income is not included in the total income of the appropriate year of assessment in violation of the express statutory provision in Section 23A, it is liable to be included when the dividend is actually paid, credited, or distributed to the shareholder. It gives the income-tax officer no choice as to whether to tax the shareholder's considered income on the basis that it accrued at the time of distribution under Section 23A(1) or the time of actual receipt of the share under Section 23A. (4).

If for any reason the income is not taxed in the year in which it was expressly required by law to be assessed under the provisions of the statute, the provision that prevents double taxation in respect of the same income, once at the stage of deemed receipt and another at the stage of actual receipt-cannot be converted into an enactment enabling taxation at the stage of receipt.

Hence the Hon'ble Supreme Court of India was pleased to restore order by dismissing High Courts order that even if assessee has been assessed u/s 23A in the accounting period of the assessment year 1939-1940, he would still be liable to pay tax u/s 16(2) of the Income Tax Act, 1922 in the assessment year 1943-1944.

ANALYSIS AND CONCLUSION

In the present case as the fundamental rule of Income Tax, the Hon'ble Supreme Court held that Double Taxation is applicable in cases where it is explicitly so mentioned and notified and regulated by the Central Government u/s 295 of the Income Tax Act, 1960.

The Hon'ble Supreme Court in the case of *Jai Brothers & Others v. Union of India & Ors*⁷ held that "there can be double taxation if the legislature has distinctly enacted it, the statute cannot be interpreted so as to subject double taxation over same income, if there need be double taxation the legislature so needs to expressly state in words and sanction it, it is not open to anyone to invoke the general principles that subject cannot be taxed twice"

Furthermore, unless the language of the statute is so compelling that the court has no choice but to accept it, a taxation statute should not be interpreted in a way that will have the effect of placing a double burden on the taxpayer for the payment of tax.

The construction that benefits the taxpayer the most should be used where there is a reasonable question. We discover that there are some instances of income tax imposition and collection under simplified schemes even under the Income-tax Act of 1961 read with the provisions of the Finance Act of the relevant year. In certain circumstances, tax is imposed under a simplified scheme and is collected using special mechanisms and machinery for tax collection.

As a result, income that has been taxed under special provisions in such circumstances cannot be taxed under general provisions either directly by including income in the income of the receiver or indirectly by disallowing expenses incurred to earn such gain in income.

For instance, taxation on dividends occurs at the distribution stage, and businesses and mutual

⁷ (1970) 77ITR

funds are responsible for payment. As a result, the beneficiary of the payout is excluded from computation. However, the fact that dividends are taxed and have been taxed under the IT Act remains.

REFERENCES

- Income Tax Act, 1922
- Income Tax Act, 1961
- Jai Brothers & Others v. Union of India & Ors (1970) 77ITR
- Laxmipat Singhania vs Commissioner Of Income-Tax, U.P. (AIR 1969 SC 501)

