

PETITIONER:
COMMISSIONER OF INCOME-TAX, WEST BENGAL

Vs.

RESPONDENT:
ALLAHABAD BANK LIMITED

DATE OF JUDGMENT:
14/02/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 1058 1969 SCR (3) 722
1969 SCC (2) 148

ACT:

Finance Acts, 1956 and 1957-Explanation to Paragraph D of Part II-Definition of 'share premium account' whether such account liable to be included in the paid-up-capital for computing rebate of super tax--It to qualify for inclusion It is sufficient if it is an identifiable separate account within the reserves--Companies Act, 1956, s. 78 (3) r.w.s. 78(1)--Effect of.

HEADNOTE:

In proceedings for assessment to tax for each of the assessment years 1956-57 and 1957-58, the Income Tax Officer reduced the rebate in supertax admissible to the respondent under the Finance Acts of 1956 and 1957 on the view that the respondent bank, which was a public limited company, had distributed dividends exceeding 6% of its paid-up-capital. In reducing the rebate the Income Tax Officer excluded an amount representing share premium received by the company. The Appellate Assistant Commissioner held that the company's share premium was liable to be added to its capital in computing the reduction in the rebate in super-tax and directed modification of the order of assessment. The Appellate Tribunal in appeal, as well as the High Court, on a reference, agreed with this view.

In the appeal to this Court, it was contended on behalf of the appellant that the amount representing share premium was not to be added to the share capital because (1) the expression "share premium account" in the definition of "paid-up capital" in the Explanation to Paragraph D of Part II of the Finance Acts of 1956 and 1957 means an account apart from the reserves maintained by the company; and (2) in view of the provisions of s. 78 (3) read with s. 78(1) of the Companies Act, 1956, the respondent company was bound to maintain a separate share premium account outside the reserves and to transfer the share premium into that account which the respondent company had failed to do.

HELD : A share premium account is liable to be included in the paid-up capital for the purpose of computing rebate if it is maintained as a separate account. But the Explanation to paragraph D of Part 11 of the Finance Acts of 1956 and

1957 does not contemplate that the account must be kept apart from the reserves. if within the reserves it is an identifiable separate account, the share premium will qualify for inclusion in the paid-up capital. [728-H]

Although under the Companies Act 1 of 1956 there was an express provision that the share premium account shall be maintained in a separate account and by virtue of Sch. VI of the Act the share premium has to be shown in the balance sheet under the head "Liabilities" as part of the share capital and not of reserves, on that account it cannot be assumed that if the share premium is maintained as a separate account within the reserves, reduction in the rebate in super-tax is liable to be computed after excluding share premium. [728 C]

In any event with respect to the assessment year 1956-57 the company was being assessed to tax for the previous year of the company ending on

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December, 1955, when the Companies Act of 1956 was not in force. During that period the company was governed by Act 7 of 1913 which contained no provision analogous to s. 78 of the 1956 Act. 1727 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 701 and 702 of 1968.

Appeals from the judgments and orders dated December 17, 1963 and April 6, 1965 of the Calcutta High Court in Income-tax References Nos. 87 of 1960 and 30 of 1962 respectively.

S.T. Desai, S. C. Manchanda and B. D. Sharma, for the appellants (in both the appeals).

Sachin Chaudhuri, Sukumar Mitra and D. N. Mukherjee, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Shah, J. The Allahabad Bank Ltd. is a public limited company. The paid-up share capital of the Company other than capital entitled to a dividend at a fixed rate was at the relevant time Rs. 30,50,000 The Company had issued before January 1, 1954, shares at premium and the premium received in cash aggregated to Rs. 45,50,000. In each of the account years 1955 and 1956 the Company distributed Rs. 5,49,000 as dividend.

In proceedings for assessment for each of the assessment years 1956-57 and 1957-58 the Income-tax Officer reduced by Rs. 61,000 the rebate in super-tax admissible under the Finance Acts 1956 on the view that the Company had distributed dividend exceeding 6% of its paid-up capital. In reducing the rebate the Income-tax Officer did not take into consideration share premium amounting to Rs. 45,50,000 received by the Company.

The Appellate Assistant Commissioner held that the Company's share premium was liable to be added to the capital of Rs. 30,50,000 in computing the reduction in the rebate in super-tax, and directed modification of the order of assessment. The Appellate Tribunal agreed with the Appellate Assistant Commissioner.

The Tribunal then submitted a statement of the case and submitted the following question in respect of the year 1956-57 to the High Court of Calcutta :

"Whether on the facts and in the circumstances of the case, the amount of Rs. 45,50,000 should be added to the paid-up capital of the assessee as on 1st January, 1955, for the

purpose of allowing rebate to the ass under Paragraph D of Part III of the First Schedule to the Indian Finance Act, 1956."

A similar question relating to the assessment year 1957-58 was, also referred by the Tribunal. The High Court of Calcutta agreed

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with the Tribunal and held that in determining the reduction in rebate in super-tax admissible to the Company the share premium maintained by the Company within the reserves was liable to be included in the paid-up capital.

The Finance Act, 1956 prescribed the rate of super-tax in Part H. Paragraph D (in so far as it is relevant) enacted:

"In the case of every company-

Rate

On the whole of total income Six annas and nine pies in the rupee.

Provided that

(i) a rebate at the rate of five annas per rupee of the total income shall be allowed in the case of any company which-

(a) in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1957, has made the prescribed arrangements for the declaration and payment within the territory of India of the dividends payable out of such profits and for the deduction of supertax from dividends in accordance with the provisions of subsection (3D) of section 18 of that Act, and

(b)

(ii) a rebate at the rate of four annas per rupee of the total income shall be allowed in the case of any Company which satisfied condition (a.) but not condition (b) of the preceding clause;

Provided further that-

(i) the amount of the rebate under clause (i) or the preceding proviso shall be reduced by the sum, if any, equal to the amount or the aggregate of the amounts as the case may be, computed as hereunder

(a)

(b) in addition, in the case of a company referred to in clause (ii) of the preceding proviso which has distributed to its shareholders during the previous year "dividends in excess of six per cent of its paid-up

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capital, not being dividends payable at a fixed rate-

on that part of the said dividends which exceeds 6 per cent but does not exceed 10 per cent of the paid-up capital;

at the rate of two annas per rupee

on that part of the said dividends which exceeds 10 per cent of the paid-up capital;

at the rate of three annas per rupee;

(ii)

Provided further that

Explanation :-For the Purposes of Paragraph D of this Part-

(i) the expression "paid-up capital" means the paid-up capital (other than capital entitled to a dividend at a fixed rate) of the

Company as on first day of the previous year relevant to the assessment for the year ending on 31st day of March, 1957, increased by any premiums received in cash by the company on the issue of its shares, standing to the credit of the share premium account as on the first day of the previous year....."

In the Finance Act of 1957 also a similar scheme of granting rebate of super-tax and reduction therein in the conditions set out in the Act, was adopted.

The reduction in rebate in super-tax depended upon the proportion which the dividend distributed bore to the paid-up capital. If the Company distributed dividends exceeding 6% of its paid-up capital as defined in the explanation, the rebate was liable to be reduced to the extent provided in the second proviso. In the relevant years of account, the share premium formed an identifiable part of the reserves of the Company but was not shown in a separate share premium account apart from the reserves.

The Commissioner contends

(1) that the expression "share premium account" in the definition of "paid-up capital" in the Explanation to Paragraph D of Part 11 of the Finance Acts 1956 and 1957 means an account apart from the reserves maintained by the Company; and

(2) that in any event since the enactment of the Companies Act, 1956 "share premium" not maintainable as a separate account cannot be taken into consideration

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in dealing with the claim for rebate in the payment of super-tax and reduction in the rate thereof.

Counsel for the Commissioner relied upon s. 78(3) read with s. 78(1) of the Companies Act 1 of 1956, and submitted that the Company was bound to maintain a separate share premium account outside the reserves and transfer into that account the share premium and since the Company failed to do so, in determining the paid-up capital within the meaning of the Explanation to Paragraph D of the Finance Acts 1956 and 1957 the share premium within the reserve could not be taken into account. The relevant clauses of s. 78 of the Companies Act 1 of 1956 provide :-

"(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account"; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the Company. (2) (3) Where a company has passed a resolution authorising the issue of any shares at a premium, this section shall apply as if the, shares had been issued after the commencement

of this Act :

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of Schedule VI, shall be disregarded in determining the sum to be included in the share premium account."

Clause (1) is in terms prospective : it requires a Company to transfer premiums received in cash or otherwise on shares to the share premium' account. By clause (3) any premium received prior to the coming into force of the Companies Act, 1956 less 'that part of the premium which had been so applied so that it did not, at the commencement of the Act, form an identifiable part of the Company's reserves, had also to be transferred to the share premium account as if the shares had been issued after the commencement of the Act. Section 78 was apparently borrowed from s. 56 of the English Companies 1948 (11 & 12 Geo. 6 ch. 38.) Before the Companies Act of 1956 there was provision in the Indian Com-
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panies Act 1913 which required a Company to maintain a separate share premium account. After the coming into force of the Companies Act 1 of 1956 a share premium account had to be maintained and the share premium could not be used otherwise than for the specific purposes mentioned in s. 78 (2).

The plea raised by the Commissioner that the Company failed to comply with the statutory injunction contained in Cl. (1) of s. 78 and on that account the premium received were not "standing to the credit of the share premium accounts within the meaning of the Explanation to Paragraph D in the Finance Act 1956 may be rejected on a simple ground.

In the assessment year 1956-57 the Company was being assessed to tax in respect of the previous year of the Company ending on December 31, 1955. In the calendar year 1955, the company was governed by the Indian Companies Act 7 of 1913 which contained no provision analogous to s. 78 of the Companies Act 1 of 1956. The Companies Act was before the Parliament during the year 1955, but the Company was on that account not obliged to transfer to a separate share premium account independent of the reserve the premiums received prior to January 1, 1955. The Companies Act came into force on April 1, 1956 : it had no retrospective operation. Since there was no obligation upon the Company to maintain a separate share premium account in the previous year corresponding to the assessment year 1956-57 the share premium account maintained as an identifiable account within the reserves qualified for being included in the paid up capital within the meaning of this expression in the Explanation to Paragraph D Part II of the Finance Act, 1956. For the assessment year 1956-57, therefore rebate in super-tax was liable to be reduced, if the Company had distributed dividend exceeding six per cent of the paid-up capital inclusive of share premiums maintained as an identifiable account. The contention raised by the Commissioner must therefore fail in respect of the assessment year 1956-57.

Counsel for the Commissioner contends that in any event in the Finance Act 2 of 1957 the expression "share premium account has only the meaning ascribed thereto in the Companies Act, 1956, and in respect of the assessment year 1957-58, reduction in the rebate must be computed without taking into account the share premium which was maintained by the Company in the year of account 1956 within the reserve.

Under the Finance Act 2 of 1957 rebate in super-tax is liable to be reduced in the case of Companies which have, inter alia, distributed to the shareholders in the previous year dividends in excess of 6 per cent of the paid-up capital not being dividend payable at

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a fixed rate. The expression "paid-up capital" is also defined in substantially the same terms as under the Finance Act, 1956.

For the assessment year 1957-58 the Tribunal found that the share premium was liable to be included in the paid-up capital, because it was an identifiable part of the reserves. In our judgment the Tribunal was right in so holding. The Explanation to Paragraph D Part H of the Finance Act, 1957, does not require that the share premium account must be maintained as an account outside the reserves. Under the Companies Act 1 of 1956 there was an express provision that the share premium account shall be maintained in a separate account. It is true that in the balance-sheet in Sch. VI of the Act the share premium has to be shown under the head "Liabilities" as part of the share capital and not of reserves. But it cannot be assumed on that account that if the share premium is maintained as a separate account within the reserves, reduction in the rebate in super-tax is liable to be computed after excluding share premium. The Explanation requires that in determining the paid-up capital for the purpose of rebate in super-tax, share premium standing to the credit of a share premium account shall be excluded it does not make maintenance of an account outside the reserve a condition of its inclusion in the paid-up capital.

Again if under the Finance Act, 1956, the expression "standing to the credit of the share premium account" did not mean that the share premiums shall be maintained in a separate account apart from the reserve, is there any reason why, under an identical scheme of reducing rebate in super-tax in the year 1957-58, it should have a different meaning? In the absence of any compelling grounds, we would not be justified in holding that the Parliament attributed to the expression "standing to the credit of the share premium account" as used in the Explanation to Paragraph D Part 11 of the Finance Act 2 of 1957, a meaning different from the one which it had under the Finance Act, 1956. The object of the Parliament in enacting Paragraph D of the Finance Act was that profits earned by a Company should be available for being ploughed back into the business and should not be distributed to the shareholders by way of dividend in excess of the rate prescribed. To secure that object the Parliament gave an incentive to 'the Company of substantial rebate in payment of super-tax which would be liable to be forfeited, if part of dividend exceeding 6 per cent was distributed to the share-holders.

Share premium account is accordingly liable to be included in the paid-up capital for the purpose of computing rebate if it is maintained as a separate account. The Explanation does not contemplate that the account must be kept apart from the reserves. If within the reserves it is an identifiable separate account, the

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share premium will qualify for inclusion in the paid-up capital. in computing the reduction in rebate of super-tax. The appeals fail and are dismissed with costs. One hearing fee.

R.K.P.S.

Appeals dismissed..

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JUDIS