INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

1952
Mar. 28

RAJA BAHADUR MUKUNDLAL BANSILAL (APPLICANT) *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY (RESPONDENT).*

Indian Income-tax Act (XI of 1927), s. 10 (2) (xi)—Wiping of bad and doubtful debts as irrecoverable—Assessee claiming deduction on account of such debts—Satisfaction of the Income-tax Officer that such debts have become irrecoverable in the year of account is necessary for such claim being allowed.

In cases where accounts are not kept on cash basis, in order to claim deduction under s. 10 (2) (xi) of the Indian Income-tax Act, 1922, the debts for which deduction is claimed must be bad or doubtful and must have been written off in the assessee's books of account. The Income-tax Officer must be further satisfied that not only have the debts become irrecoverable but that they have been irrecoverable in the year of account. If, therefore, the Income-tax Officer takes the view that the debts have become irrecoverable not in the year of account but in an earlier year, the assessee's claim in that behalf in the year of account cannot be allowed.

Commissioner of Income-tax, Central Provinces and Berar v. *Sir S. M. Chitnavis*,[1] followed.

Facts material to this report are sufficiently set out in the judgment.

The following questions, *inter alia,* were referred to the High Court:—

(2).....Whether on the true interpretation of s. 10 (2) (xi) of the Indian Income-tax Act, it is open to the Income-tax Officer to disallow a claim under that section on the ground that the loan had become irrecoverable in a year of account earlier than that in which it was written off?

(3) whether there was material on which the Tribunal could have come to the conclusion that the loan to Niranjan Prakash had become irrecoverable in S. Y. 1997, if not earlier?

The reference was heard.

Sir J. B. Kanga for the applicant.

C. K. Daphtary, Solicitor General, for the respondent.

CHAGLA C. J. This reference raises a question as to the interpretations of s. 10 (2) (xi) of the Income-tax Act. We entirely agree with the Tribunal when it takes the view that this particular clause has not been very happily drafted. If anything, the Tribunal has used very moderate language in considering

* Income-tax Reference No. 40 of 1951.

[1] (1932) L. R. 59 I. A. 290 s. c. 6 I. T. C. 453.

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the wording used by the Legislature. But, we have to construe it as we find it, and when we turn to that clause, it deals with a deduction under s. 10 (2); and the deduction in case of a person who is doing business, and whose accounts are not kept on cash basis, is

"such sum, in respect of bad and doubtful debts,.....as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee:"

It is difficult to understand what distinction is sought to be made between bad and doubtful debts; but the difficulty and ambiguity is cleared by the fact that whether the debt is bad or doubtful, it must in the estimate of the Income-tax Officer be irrecoverable. Therefore, in the case, of persons doing business, and whose accounts are not kept on cash basis in order to be entitled to a deduction under s. 10 (2) (*xi*) these conditions are necessary: the debt must be bad or doubtful debt; the Income-tax Officer must take the view that it is irrecoverable and further it must be written off in the books of the assessee. However, when a debt is written off in the books of the assessee, the Income-tax Officer may take the view that although the assessee has written off the debt, it became irrecoverable not in the accounting year but in an earlier year. If he takes that view, then the assessee would not be allowed to claim a deduction in the year of account However, in the case of bankers and money-lenders what can be claimed as a deduction is a loan or part of a loan which may become irrecoverable in the opinion of the Income-tax Officer, and there again, the banker or the money-lender has to write off the loan or the part of the loan and in his case also the mere fact that he chooses to write off the loan or part of it in a particular year does not necessarily mean that it had become irrecoverable in that particular year. In other words it is not left to the creditor's choice to determine when a particular debt became a bad debt or irrecoverable, nor is it left to the banker or money-lender to decide when a loan or part of it became irrecoverable, by merely writing off the debt or the loan or part of it in his books. One of the conditions is the writing off of the bad debt or the loan which has become irrecoverable; but it is not sufficient. The assessee must satisfy the Income-tax Officer that in fact the debt or the loan became irrecoverable in the year of account. Now, the Tribunal has pointed out in the statement of the case that it felt some doubt and required guidance from us and they have

referred to a Privy Council case, viz. *Income-tax Commissioner* v. *Chitnavis*.[1] Now, that case itself furnishes sufficient guidance to the Tribunal with regard to the matter in which they felt doubt, because when we turn to that case, their Lordships point out as follows (p. 297):

> ".....It thus follows that a debt, which had in fact become a bad debt before the commencement of a particular year, could not properly be deducted in ascertaining the profits of that year, because the loss had not been sustained in that year."

Their Lordships further observe (p. 297):—

> "Whether a debt is a bad debt, and, if so, at what point of time it became a bad debt, are questions which, in their Lordships' view, are questions of fact, to be decided in the event of dispute by an appropriate tribunal, and not by the ipse dixit of any one else."

Now, in the light of these observations let us look at the facts of this case. The assessee does money-lending business and on October 28, 1936, he agreed to advance to one Niranjan Prakash a sum not exceeding Rs. 40,000 for the completion of a motion picture "*Path of Glory*". Niranjan absconded in 1937 and the picture was got completed by the assessee. It was approved by the Board of Censors. The picture was not a success, and, therefore, on April 16, 1941, the assessee entered into an aggreement with one Garcher, who had to improve the picture and then exploit it. Under the agreement with Garcher certain amounts were received by the assessee. There were no receipts in S. Y. 1999, and, therefore, on October 11, 1944 (S. Y. 2000) the assessee sold four positive prints of the picture for Rs. 850, and then wrote off the balance due to him from Niranjan. It is, therefore, with the S. Y. 2000 that we are concerned, as the assessee claims that the balance, due to him from Niranjan had become an irrecoverable debt in the year. Now, a loan becomes irrecoverable or a debt becomes a bad debt when the creditor has no reasonable expectations of recovering it from the debtor; or, as it has been put in some cases, when there is no ray of hope at all on which the creditor can rely for recovering the amount from his debtor, that it can be said that a debt has become bad or a loan has become irrecoverable. But, if the correct principle is applied by the Department, then it must be a question of fact as to whether a debt has become a bad debt or not. Now, unfortunately in this case the Tribunal has expressed an opinion that the loan had become "practically" irrecoverable" in S. Y. 1997, and in the question which has been submitted to us also the expression used is,

[1] (1932) L. R. 59 I. A. 290 s. c. 34 Bom. L. R. 1071.

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"Whether there was material on which the Tribunal could have come to the conclusion that the loan to Niranjan Prakash had become practically irrecoverable in S. Y. 1997 if not earlier?"

Now, if the assessee claims, as he did, that the loan had become irrecoverable in S. Y. 2000, it is not sufficient for the Tribunal to hold that it had become "practically irrecoverable" in S. Y. 1997 in order to deprive the assessee of his claim to deduction under s. 10 (*2*) (*xi*). The Tribunal must find as a fact that the loan had become, not "practically irrecoverable" but "irrecoverable" at a a time prior to S. Y. 2000. The Solicitor General says that there were materials before the Tribunal on which they could have come to that conclusion. It is pointed out that in S. Y. 1996 the assessee had received only Rs. 26; there were no receipts in S. Y. 1997. In S. Y. 1998 only Rs. 206 were received; there were again no receipts in S. Y. 1999. It may be that on those facts the Tribunal could have come to the conclusion that the loan had become irrecoverable prior to S. Y. 2000. But unfortunately the Tribunal has not so found, and, therefore, the proper thing that we should do in this case is to send the matter back to them and ask them, in the light of this judgment, to find as to whether on the materials before them the loan had become irrecoverable prior to S. Y. 2000. If they come to that conclusion, then the assessee would not be entitled to a deduction under s. 10 (*2*) (*xi*). If, on the other hand, they take a view that the loan became irrecoverable only in S. Y. 2000 and could not be said to be irrecoverable prior to that, then the assessee would be entitled to a deduction under s. 10 (*2*) (*xi*).

With regard to the first question submitted to us, viz.,

"Whether the monetary transaction of the assessee with Niranjan Prakash was a loan made by the assessee to Niranjan Prakash in the course of his money-lending business,"

the Tribunal has found as a fact that the assessee was a money-lender and what he was doing was advancing moneys on the security of the film. Here again the finding of the Tribunal is not very clearly expressed. They say:

"Regard being had to all circumstances, it is difficult to hold that the transaction entered into by the assessee with Niranjan was an ordinary money-lending transaction. It is more like a business transaction. We are however prepared to agree with Mr. Sankara Narayana that it was a money-lending transaction.

With respect to the Tribunal, it is rather difficult to appreciate as to what exactly they desire the finding of fact should be. But on the whole we take the view that they have found as

a fact that this transaction was a transaction in the course of money-lending business, which was being carried on by the assessee. Therefore, we must answer the first question in the affirmative. With regard to the second question, viz.,

"If the answer to the first question be in the affirmative whether on a true interpretation of s. 10 (2) (*xi*) of the Indian Income-tax Act, it is open to an Income-tax Officer to disallow a claim under that section on the ground that the loan had become irrecoverable in a year of account earlier than that in which it was written off."

We should have thought that there was no doubt as to what the answer to this question should be, because as laid down by their Lordships of the Privy Council in *Commr. of Income Tax* v. *Chitnavis*, it was for the Income-tax Officer to determine when the loan become irrecoverable. Therefore, the answer to that question would be in the affirmative. We do not answer the third question, but we have remanded the matter as pointed out in our judgment. There will be no order as to costs.

Attorneys for applicants: *Motichand & Devidas.*

Attorneys for respondent: *N. K. Petigara.*

Answer accordingly.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar.

JAMNADAS PRABHUDAS (APPLICANT) *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY (RESPONDENTS).*

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Constitution of India—Art. 133 (1)—Indian Income Tax Act (XI of 1922) ss. 66, 66A (2)—Reference to High Court under s. 66 of the Indian Income Tax Act, 1922—Whether such decision falls within the terms of and appealable under Art. 133 (1)—Whether proceedings in High Court on reference in income-tax matters civil proceedings under Art. 133 (1).

The expression "judgment, decree or final order" used in Art. 131 (*1*) of the Constitution of India is used in its technical English sense, which means a final declaration or determination of the rights of the parties given on merits. The expression "Judgment, decree or final order" is a compendious one each one of the parts of which bears the same connotation, viz. that there is an adjudication by the Court upon the rights of the parties who appear before it. "Judgment" must not be read in contradistinction to "decree or final order."

* Income-tax Reference No. 3 of 1950.