

Bank Of Bihar Ltd., Patna vs Commissioner Of Income-Tax, Bhiar And ... on 27 March, 1962

Equivalent citations: [1962]45ITR427(SC)

Bench: J.C. Shah, M. Hidayatullah

JUDGMENT

Shah, J.

1. In the proceedings for assessment of income-tax for the year 1950-51, the assessees, who are a public limited company carrying on the business of banking, claimed that an amount of Rs. 4,22,582 due in the account of Messrs. Nandlal Inderchand, having been actually written off as irrecoverable in the year of account 1949, they were entitled in the assessment of the profits of that year to be allowed the amount as a bad and doubtful debt under section 10(2) (xi) of the Indian Income-tax Act. The amount of Rs. 4,22,582 consisted of three items as follows :

(a) Rs. 2,11,089 due from the firm styled Messrs. Nandlal Inderchand under an account which commenced in the year 1943. In this account the debtor had pledged shares of the value of Rs. 28,000 odd.

(b) Rs. 1,02,325 originally due from a firm carrying on business in the name of B. I. G. Co., Calcutta.

(c) Rs. 1,09,168 originally due from a firm carrying on business in the name of Fulchand Srinarain, Calcutta.

2. For the amounts due under the accounts styled Messrs. B. I. G. Co. and Fulchand Srinarain, there was no security. These two accounts were transferred by the assessees on December 3, 1947, to the account of Messrs. Nandlal Inderchand and amalgamated with that account.

3. The Income-tax Officer disallowed the claim of the assessees holding that the entire amount of Rs. 4,22,582 had become irrecoverable in 1947 and not in the year of account 1949. The Appellate Assistant Commissioner held that the amount of Rs. 2,11,089 originally due in the account of Messrs. Nandlal Inderchand had not become irrecoverable in 1949 but had become irrecoverable in the year of account 1950, and that the amount due in the other two accounts - B. I. G. Co. and Fulchand Srinarain - had become irrecoverable in the year 1947, and the assessee were not entitled to treat the entire amount of Rs. 4,22,582 as a bad debt in the year of account 1949. The Income-tax Appellate Tribunal accepted the findings of the Appellate Assistant Commissioner that the amounts due from the B. I. G. Co. and Messrs. Fulchand Srinarain had become irrecoverable in the year of

account 1947 and could not be allowed as bad or doubtful debts in the assessment of profits for the year of account 1949. The finding of the Appellate Assistant Commissioner about the amount due from Messrs. Nandlal Inderchand was not challenged before the Tribunal and, in this appeal; we are not concerned with the disallowance of that amount.

4. The Tribunal declined to refer to the High Court under section 66(1) of the Income-tax Act a statement of the case about the amounts due in the two accounts of B. I. G. Co. And Fulchand Srinarain, but the High Court, by order dated July 31, 1957, directed the Tribunal to state a case under section 66(2) on the following question :

"Whether, in the circumstances of the case, the income-tax department was legally justified in rejecting the claim of the assessee under section 10(2) (xi) of the Income-tax Act with regard to the amount of Rs. 2,11,493 claimed as bad debt for the assessment year 1950-51 ?"

5. The High Court at the hearing of the reference held that the conclusion whether a debt had become irrecoverable and was to be treated as a bad debt in 1947 was one of fact and not liable to be reopened in a reference under section 66 of the Income-tax Act, for there was evidence on which the conclusions of the Appellate Assistant Commissioner and the Tribunal could be founded. With special leave, the assessee have appealed to this court.

6. Undoubtedly, on December 3, 1947, the amounts due in the accounts of B. I. G. Co. and Fulchand Srinarain were transferred to the account Messrs. Nandlal Inderchand and the accounts were amalgamated. It also appears that Messrs. Nandlal Inderchand were interested in the two business, B. I. G. Co. and Fulchand Srinarain. But the Tribunal found that Messrs. Nandlal Inderchand did not guarantee the loans advanced to B. I. G. Co. and to Fulchand Srinarain. The two accounts had not been operated since the year 1946 and it appeared that in the year 1947, these two firms were not in a position to pay the amounts due by them. The Tribunal in this state of affairs held that the debts had become bad in the year 1947 and could not be allowed under section 10(2) (xi) in the year of account 1949.

7. Mr. Viswanantha Sastri for the assessee contends that it was open to the assessee to amalgamate the three accounts of the same debtor and if the debtor was in a position to pay and did pay some amounts towards the consolidated account, it could not be said that because nothing was recovered in the years prior to amalgamation the debts must be deemed to have become bad in those previous years. But there is no evidence to show that Messrs. Nandlal Inderchand were the exclusive owners of the business carried on in the names of B. I. G. Co. and Fulchand Srinarain. The finding of the income-tax authorities was that they were interested in those businesses. Again, apart from the pledge of shares of a small value, there is no evidence of any assets of Messrs. Nandlal Inderchand which could be restored to for satisfying the liability for debts due by the two firms - B. I. G. Co. and Fulchand Srinarain. If those two debts had become irrecoverable in 1947, by merely amalgamating them with the debt due from Messrs. Nandlal Inderchand an amount exceeding rupees two lakh s was due and the value of the shares pledged was less than 1/7th of the total amount due in that account. The security was, therefore, wholly insufficient to satisfy even the debt

for which it was given.

8. The question whether a debt is a bad debt is one of fact, and if there is some evidence to justify the conclusion, it is no open to the High Court in a reference under section 66 of the Indian Income-tax Act to re-appreciate the evidence. As observed by their Lordships of the Privy Council in Commissioner of Income-tax v. S. M. Chitnavis in interpreting section 24 of the Indian Income-tax Act, 1922 :

"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 the appropriate Tribunal, and not by the ipse dixit of anyone else. The assessee has no option of declaring a debt as bad... In every case it is a question of fact, to be determined after consideration of all relevant circumstances."

9. It is true that at the material time when this case was decided, the Act contained no provision such as section 10(2) (xi) authorising deductions of bad debts of business, but it was held that such a deduction was necessarily allowable; to refuse to do so would result in a statement of profits and gains of the year which was not true.

10. In this case before the Tribunal there was evidence on which it could hold that the debt had become bad in the year 1947. If the debt had become bad in the year 1947, by its mere subsequent amalgamation unilaterally made by the creditor with a debt which was recoverable, it did not cease to be bad.

11. The appeal, therefore, fails and is dismissed with costs.

12. Appeal dismissed.