Bareilly Corporation Bank Ltd., ... vs Commissioner Of Income-Tax, U.P., ... on 9 September, 1952

Equivalent citations: AIR1953ALL208, [1952]22COMPCAS322(ALL), [1952]22ITR470(ALL), AIR 1953 ALLAHABAD 208

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Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a reference by the Income-tax Appellate Tribunal under Section 66(1), Income-tax Act. The assessee is a limited Banking Company having among its objects the following.

Clause (a) To give loans or advances on personal or other security and to carry on banking business generally.

Clause (c) To acquire by purchase, lease, exchange or otherwise any movable or immovable property & any rights or privileges which the company may think necessary or convenient with reference to any of the objects for which the company is established or the acquisition of which may seem calculated to ensure any immediate or remote advantage to the company.

Clause (g) To sell, improve, manage, develop, exchange, lease mortgage, dispose of, turn to account or otherwise deal with all or any part of the property of the company and to sell and to realise the proceeds of sale of any movable or immovable property of the company.

2. Though according to Clauses (c) & (g) the objects of the company included acquisition of movable and immovable property which may seem calculated to ensure advantage of the company and to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise, deal with all or any part of the property of the company, the assessee was not actually carrying on these activities as a business. In the course of its business, however, the assessee was advancing loans and one of the loans advanced was a sum of Rs. 38,000/- at an interest of 6 per cent, per annum as an over-draft to the Rohelkhand Ice Factory. The interest was charged at a reduced rate of 5 per cent. per annum after a certain period. This loan kept on mounting up and in order to discharge the loan, the Rohelkhand Ice Factory entered into an agreement with the assessee transferring its 3/4ths interest in the shares and assets etc., including lands, buildings, and godown

of the Match Factory at Bareilly for a consideration of Rs. 75,000/-. An additional sum of Rs. 1,219/2/- was also included in the consideration, as this amount had to be spent by the assessee on account of stamp-duty payable on the deed of transfer.

Under the deed of transfer, all the income of the Rohelkhand Ice Factory from this property was to be the income of the Ice Factory upto 31st December 1939, but thereafter it was to be the Income of the assessee. This transfer was taken in pursuance of a resolution adopted by the Board of Directors of the assessee company on 18th December 1939, and on the same day another resolution was passed indicating how the taking of this transfer was not going to result in loss to the assessee company, the reason given being that the property was likely to yield an income of 4 per cent. On the 30th December 1939 an entry was made in the accounts of the assessee company debiting Rs. 75,000/- as costs paid to Rohelkhand Ice Factory for this property. The deed of transfer was actually executed on the 22nd December 1940, and the sum of Rs. 1,219/2/-of general stamo paper for execution of the deed was debited in the accounts a day earlier as cost of general stamp paper for execution of the deed of transfer and for meeting registration charges. The transfer was actually completed on the 1st January 1941.

The assessee started making transfers of the property so acquired In bits. The first of these transfers was made on the 19th December 1941 and there were other transfers on the 26th October 1943, 3rd November 1943, 18th January, 1944, 25th May, 1944 and 16th December, 1944. As a result of these transfers the book value of the property which originally stood at Rs. 76,219/-fell to Rs. 4779/8/- by the end of the year 1944. The amount realised by these transfers together with the sum of Rs. 4,779/8/- which was the book value of the residue of the property left with the assessee exceeded the cost value of the property i.e. Rs. 70,219/- by a sum of Rs. 28,879/-. This sum of Rs. 28,879/- was shown as having been realised by the assessee during the year 1944 and the Income-tax Officer, holding it to be the profits of the business of the assessee in the nature of revenue receipt, assessed income-tax on it. In appeal the Appellate Assistant Commissioner as well as the Income-Tax Appellate Tribunal upheld the order of the Income-tax Officer. Thereupon the assessee applied to the Tribunal to state the case for opinion to this Court.

3. The Tribunal has, on the above facts, referred the following two questions:

> (i) Whether on the above statement of the case and on the construction of its Articles of Association the transaction of purchase of the Match Factory and the subsequent sale of its premises in different bids could legally be held to be a transaction entered into by the applicant in the course of its money lending business?
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> (ii) Whether in the circumstances of the case, the receipts of the applicants by the resale of the premises of the Match Factory were revenue receipts or capital receipts?

4. Mr. Pathak, learned counsel for the assessee, has addressed arguments at great length to us to make out that this purchase of the property by the assessee and its re-sale in bits were not in the course of the business of the assessee of "acquiring or selling immovable property" nor was it an adventure in the nature of a trade and consequently the income which arose out of this transaction

should not be treated as a revenue receipt. His contention was that this sum of Rs. 28,879 had accrued as profit on a capital investment as a result of the appreciation of the value of property acquired as capital so that it must be held to be capital receipt. This argument of the learned counsel does not appear to us to be relevant in this case as the questions referred to us by the Tribunal are not touched by this point. The income-tax authorities have not taxed the amount of Rs. 28,879 as income from the business of acquiring and selling immovable property nor has it been held by the income-tax authorities that this transaction was an adventure in the nature of trade or commerce.

Learned counsel had cited before us the cases of -- 'Seksaria Biswan Sugar Factory Ltd., v. Commissioner of Income-tax (Central) Bombay', 1950-18 ITR 139 (Bom). -- 'Commissioner Inland Revenue v. Fraser', (1944) 24 Tax Cas 498 --'Jones v. Leeming', (1930) AC 415, and -- 'The Commissioner of Inland Revenue v. Hyndland Investment Company', (1929) 14 Tax Cas 694 in support of his arguments. We do not consider it necessary to discuss these cases as they only bear on the question as to whether in this case the transaction of purchases of the shares and assets etc., of the Match Factory by the assessee could or could not be held to be an adventure in the nature of a trade. What the income-tax authorities have held is that the acquisition and sale of this property by the assessee was a transaction entered into by the assessee 'in the course of its money lending business' and it is on this basis that the questions have been framed by the Tribunal for reference. We, therefore, need only examine this aspect of the case.

5. Ordinarily the question whether a certain property was acquired and sold in the course of a transaction entered into when carrying on a particular business such as money lending business is a question of fact. Learned counsel for the assessee has, however, argued' that under certain circumstances the decision of such a question depends on inferences to be derived from facts and in such cases it becomes a question of law. In support of this contention learned counsel referred us to the views of the Lord Chancellor (Viscount Simon), in -- 'Bomford v. Osborne', 1942-10 ITR (Sup) 27. The Lord Chancellor, discussing the comment of the Commissioners that their conclusions were a finding of fact, observed:

> "In the present instance (and the practice is not uncommon) the Commissioners after carefully setting out exhaustively the facts proved or admitted, proceed in a subsequent paragraph to state their own conclusions as a finding of fact. Presumably, the Commissioners mean to say that they deduce from the facts which were proved or admitted the three conclusions stated in para 5, and that they regard these conclusions as matters of fact. No doubt there are many cases in which Commissioners, having had proved or admitted before them a series of facts, may deduce thereform further conclusions which are themselves conclusions of pure fact. But in such cases the determination in point of law is that the facts proved or admitted provide evidence to support the Commissioner's conclusions."

6. There can be no doubt that when inferences have to be drawn from facts proved, the question whether those inferences could or could - not be drawn can be a question of law. The function of this Court in examining the finding of an Income-tax Tribunal under such circumstances were very clearly brought out by one of us in the case of -- 'Lalit Ram Mangilal v. Commissioner of

Income-tax', UP Lucknow, 1950-18 ITR 286 (All). Where it was held:

> "Certain facts are proved by direct or circumstantial evidence and these findings might be called the primary findings of facts. It is not disputed that such findings cannot be reopened before this Court so long as there is evidence on which such findings are based. After the primary facts have been found the question arises of inferences from them. Any legal effect from such findings must necessarily be a question of law. Where it is an inference of fact, if the inference could not be derived from the proved facts, even in that case it is possible to hold that this Court can go into the question on the same ground on which this Court does not consider itself bound by findings of fact which are not based on any evidence. Where the inference drawn is not a pure inference of fact but is a mixed inference, partly of fact and partly of law, so far as the inference is an inference of law this Court cannot be bound, but a pure inference of fact from primary facts proved, if it is not possible to hold that such inferences cannot follow from such findings, cannot be re-opened before us."

7. It may be noticed that the views of the Lord Chancellor in -- 'Bomford v. Osborne', (1942-10 I. T. R. (Sup) 27) and the views expressed in -- 'Lalit Ram Mangilal v. Commissioner of Income-tax, U. P.', (1950-18 I. T. R, 286 All) are, in no way, divergent. Even the Lord Chancellor was of the view that, where conclusions of facts are deduced from pure findings of fact the question of law that arises merely is as to whether the facts proved or admitted "provide evidence" to support the conclusions drawn. In the case before us, therefore, we have first to determine what are the primary questions of fact which have been determined by the Tribunal and then we are only competent to examine whether the infererice drawn by the Tribunal that the acquisition and sale of the property fay the assessee was a transaction entered into by it in the course of its money-lending business, could or could not have been drawn from those facts. It appears, from the statement of the case and the appellate order of the Tribunal that the Tribunal arrived at the following four primary findings of facts:

> 1. That the assessee was carrying on banking business and, in the course of such business, it had advanced a loan to the Rohelkhand Ice Factory.
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> 2. That the property under consideration viz. the shares and assets etc., of the Match Factory were not purchased by the assessee as an investment but were only taken by them on being compelled by circumstances to accept them as payment towards their loan under circumstances which indicate that this was the only means of realising that loan.
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> 3. That the property was accepted in lieu of the loan at a time when the value of such property was rising in the market and it was felt that this was probably the only means by which, either the loss could be cut down or a profit earned on that transaction.

> 4. That the assessee had a rooted objection to investing money in immovable property so much. so that the assessee did not buy buildings for the-purpose of housing its various branches.

8. It appears impossible for us to say that on these primary facts found by the Tribunal, the Tribunal could not have arrived at the inference that the acquisition and sale of this property by the assessee were merely steps in the transaction of advancing and realising its loan which had been advanced to the Rohelkhand Ice Factory in the course of its business of money lending. As soon as the assessee found it possible, the property which had been accepted in lieu of the loan was converted into cash by sale of that property. We cannot see any force at all in the contention that this property was taken as an investment of capital by the assessee when the assessee's own case throughout has been that it never wanted to invest its capital in immovable property; and the conduct of the company in iselling the property as soon as it was feasible clearly shows that the property was held only temporarily in lieu of its stock-in-trade of the money-lending business.

We may give an illustration which makes the position quite clear. Supposing an assessee is carrying on only one business viz., moneylending and, in the course of this business, he advances a loan to another person. The assets of that person somehow become non-available to the moneylender except for a valuable watch. The debtor may offer that watch to the moneylender as being the only means by which his debt can be discharged and the moneylender may be forced to accept it in payment of his debt though he might have a rooted objection to realise his loans in kind and might never have intended keeping his money invested in a watch. In such a case, after accepting the watch, the moneylender would sell it & convert it into cash that his money might again become available for his business of money-lending. Under these circumstances no one can contend that the acquisition of the watch, by the moneylender was an investment of his capital and that, if he realised any profit or loss on the sale of the watch taken in lieu of the loan which was due to him from his debtor, such profit and loss would be a capital receipt or capital loss and not a revenue receipt or revenue loss. Obviously the acquisition of the watch and its sale will be treated as a transaction entered into during the course of moneylending business when, it became necessary to do so for the purpose of realising the loan advanced.

The case before us is exactly parallel. In this case, the assessee was compelled to accept the shares and assets etc., of the Match Factory in lieu of the loan advanced to the Rohelkhand Ice Factory and it is impossible to hold that this acquisition of the property was meant to be an investment of capital. The property was sold and converted into cash as soon as it was feasible to do so and the money so realised became available for use by the assessee in its moneylending business. The acquisition and sale of the property were, therefore, merely steps in the transaction of advancing the loan to the Rohelkhand Ice Factory and realising the loan from that Factory, Any amount realised in excess of the amount due from the factory on the loan was, therefore, income arising from a transaction of moneylending business.

Learned counsel, in this connection, referred us to a decision of this very Bench in -- 'Gurucharan Prasad Jagannath Prasad v. Commissioner of Income-tax U. P. and Ajmer-Merwara Lucknow 1951-19 I. T. R. 42 (All). The facts in that case were, however, quite different. In that case, the most

important circumstance that was found was that the assessee had received the properties in the year 1923 and they were sold in the year 1941. The assessee had kept those properties with him for a period of eighteen years. During that period, the properties or their value were not available to the assessee for carrying on moneylending business and it was held that his retention of the property for such a long period clearly indicated that he treated these properties as his own property which had been received by him in satisfaction of his debts due from his debtor. He did not convert the properties almost immediately into cash for the purpose of carrying on his moneylending business. There was a further fact that the assessee had continued to maintain the account of his debtor as showing an outstanding balance and it was not till the properties were sold, eighteen years later, that it was contended that the difference in the amount outstanding in the account and the value of the property realised was a bad debt. It was in those circumstances that it was held that the loss incurred by the sale of the property was not revenue loss and that that loss could not be treated as a bad debt. The circumstances in the present case are entirely different. In this case, it is clear that the Income-tax Tribunal was fully justified in inferring that the property acquired from the Rohelkhand Ice Factory was sold by the assessee as payment of the loan advanced and was converted into cash very soon afterward when it became feasible to do so.

9. Consequently, our answer to the questions referred by the Tribunal is as follows:

> 1. On the statement of the case and on the construction of the Articles of Association of the assessee the transaction of purchase of the Match Factory and the subsequent sale of those premises in different bits could legally be held to be a transaction entered into by the assessee in the course of its money-lending business.
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> 2. That, in the circumstances of the case, the receipts of the assessee by the re-sale of the premises of the Match Factory were revenue receipts.

10. The department will be entitled to Rs. 400/-as its costs from the assessee.