

Mt. Munno Bibi vs Commr. Of Income Tax on 15 January, 1952

Equivalent citations: AIR1952ALL514, [1952]22ITR101(ALL), AIR 1952 ALLAHABAD 514

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The question referred to us under Section 66 (1), Income-tax Act, is as follows:

"Whether in the circumstances of the case, the cash amount of Rs. 13000 received as part of the liquidation of the mortgage debt which included a sum of Rs. 34994 on account of interest could in the absence of any circumstances prior to the filling of the return indicating to which item of the mortgage dues principal, interest or costs, the amount was to be applied could be presumed in law to be the receipt of interest and assess-ed as such."

2. The facts are that a sum of Rs. 49320 had been advanced by the assessee on foot of a mortgage bond. The debtor applied under the U. P. Encumbered Estates Act and a decree under Section 14 of the said Act was passed for Rs. 85828 which included the principal sum of Rs. 49320 lent and interest thereon Rs. 34994 and costs Rs. 1582. That decree was sent to the Collector for liquidation of the debt. The Collector paid a sum of as 13000 only in cash and for the balance bonds were executed in favour of the assessee. The bonds were for Rs. 72900, the assessee having paid Rs. 4 in cash to round up the figure.

3. Learned counsel appearing on behalf of the assessee has urged that the assessee has a right under Section 59, Contract Act, to appropriate the payment either towards interest or towards the principal and from the fact that in her income-tax return she had divided this amount of Rs. 13,000 in the proportion of 1/3rd and 2/3rd between interest and capital, it must be deemed that she had appropriated only 1/3rd of this amount of Rs. 13000 towards the payment of interest. Learned counsel has farther urged that if neither the creditor nor the debtor had made any appropriation, it was open to the Court under Section 61, Contract Act, to appropriate it in order of time and the same principle had been applied to a debt and interest due on it by their Lordships of the Judicial Committee in Rama Shah v. Lal Chand, A. I. R. (27) 1940 P. C. 63, the appropriation as between debt and interest duo on it was, there, fore, admissible.

4. We are afraid we cannot take into account any question of appropriation in this case. There was no suggestion made that the debtor had made any appropriation. The Income-tax Officer is not a Court nor can he have any right under Section 61, Contract Act, to make any appropriations. As for the assessee, the Tribunal, in the statement of the case, quoted the finding of the Appellate Tribunal which is as follows :

"As regards the question as to what proportion of the amount of Rs. 13000 received in cash should be treated as the payment towards interest, we have to see how this amount was appropriated by the creditor. In this respect as the assessee has not kept any account of his receipts, it is not possible to get any help from any entry in it. There is also no other proof on the record as to the manner in which the said amount was appropriated."

We must, therefore, answer the question without taking into account the question of appropriation either by the creditor or the debtor. The facts indicated in the question are that where a sum of Rs. 13000 only is received as part of the liquidation of mortgage debt when Rs. 34994 was due as interest should the whole of this payment be deemed to have been made towards interest. We have already set out the facts and they are that the principal amount due under the mortgage was Rs. 49320 while interest due was Rs. 34994 and costs Rs. 1582. The bonds, it was held by the Appellate Tribunal, were merely substituted security. That point is not before us. Assuming that bonds were merely substituted security and not payment of the debt, the result would be that only Rs. 13000 was paid towards the debt while for the balance substituted security was furnished. The question would be whether in such a case the sum of Rs. 13000 should go towards the proportionate liquidation of the principal sum also.

The general principle of law as is now well-settled, is that when any payment is made in part it should first go towards the payment of costs due, then interest and the balance, if any, towards the payment of principal. In the absence of any appropriation by either party, there is no reason why this principle should not be applied. Their Lordships of the Judicial Committee in *Meka Venkatadra Appa Rao v Raja Partha sarathy Appa Rao*, A. I. R. (9) 1922 P. C. 233, at p. 234, said:

"The question then remains as to how, apart from any specific appropriation, these sums ought to be dealt with. There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital. The rule is referred to by Lord Justice Egly in the case of *Parr's Banking Co. v Yates*, (1898) 2 Q. B. 460 which is reported in these words:

"The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon

the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract'."

On the facts stated, therefore, that only Rs. 13000 was paid towards the liquidation of the amount due and for the balance a substituted security was furnished, this amount should first be applied to the payment of costs which amounted to Rs. 1582 and the balance Rs. 11418 towards the payment of interest. This is our answer to the reference.

5. Learned counsel has relied on the decision of the Patna High Court in Sidheshwar Prasad Narain Singh v. Commr. of Income-tax, B. and O. 1942-10 I.T.R 344. The learned Judges who decided that case did not purport to lay down any general principle of law and they confined their decision to the interpretation of the agreement under, which the parties had agreed to pay half of the decretal amount and they held that the decretal amount, as it included costs, interest and principal, must be deemed to have been paid in the proportion of the costs, half of the interest and half of the principal. If the case purports to lay down any general principle, we, with great respect, beg to differ from the conclusion arrived at by the learned Judges. A person giving up a part of his claim must be deemed in the absence of any thing to the contrary to have given up interest due of the loan rather than the principal amount due to him. It is the fruit which a man may normally be deemed to have given up rather than the tree itself. As we have indicated above, in our view the sum of Rs. 11418 should be deemed to have been received towards interest.

The Commissioner of Income-tax is entitled to his costs which we assess at Rs. 200.