

Anand Behari Lal vs Commr. Of Income-Tax on 2 May, 1952

Equivalent citations: AIR1952ALL842, [1952]22ITR205(ALL)

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. Two questions have been referred to us under Section 66 (1), Income-tax Act for answer:

(1) Whether on the terms of the deed of agreement dated 19-9-1940 (Appendix A) and in the circumstances of the case, the transaction entered into by the assessee was a money-lending transaction entered in the course of his money lending business ?

(2) Whether the sum of Rs. 19,123 on account of expenses incurred by the assessee in financing the litigation in pursuance of the aforesaid agreement is a permissible deduction under Section 10(2) (XV), Income-tax Act?

2. The facts that appear from the statement of the case are as follows.

3. One Mohammad Azim Khan was a claimant to the Nanpara and the Atraula taluqas. His suit had been dismissed in the original side of the Oudh Chief Court and, instead of filing an appeal under Section 12 (2) of the Oudh Courts Act, he applied for leave to appeal to the Privy Council. The application having failed he filed an application for special leave which was granted, subject to any objection that might be taken at the time of the hearing that no appeal had been filed before a Division Bench under Section 12 (2) of the Oudh Courts Act. The Privy Council ultimately cancelled the leave granted. Mohammad Azim Khan thereupon applied for leave to appeal under Section 12 (2) of the Oudh Courts Act and filed applications under Sections 5 and 14, Limitation Act for condonation of the delay. He needed money for this purpose and on 19-9-1940, he sold to Anand Behari Lal and three others a half share in the talucas, which were the subject-matter of dispute, for a sum of Rs. 50,000, out of which Rs. 1000 was utilised in purchasing the necessary stamp for the sale deed and for registration expenses and the balance was left with Anand Behari Lal for the prosecution of the case.

Under the sale deed the vendees became owners of a half share in the property for a sum of Rs. 50,000 which, however, instead of being handedover to the vendor was kept with the vendee for the purpose of meeting the expenses of the litigation. On the same day an agreement was entered into

which limited the liability of Anand Behari Lal. In this agreement it was provided that if the Chief Court dismissed the application for leave on the ground of limitation then Anand Behari Lal will not be liable to pay anything more or meet any further expenses of litigation and he would in that case become the owner of a two annas share in the property instead of eight annas.

4. Anand Behari Lal is a money-lender and he claimed that the sum of Rs. 19,123 that he had paid for the prosecution of the applications under Section 12 (2) of the Oudh Court Act and Sections 5 and 14, Limitation Act should be deemed to be business expenses and was a permissible deduction under Section 10 (2) (xv), Income-tax Act.

5. The appellate Tribunal held against the assessee and he thereupon applied that the two questions already quoted by us should be referred for our decision.

6. We have looked into the sale deed and the agreement of 19-9-1940 and there can be no doubt that Anand Behari Lal had purchased a share in the property for Rs. 50,000 which by the later agreement of the same date became a purchase of a two annas share of the property for Rs. 19,123 already advanced by him. In a loan transaction the idea always is that the debtor will repay the loan to the creditor. Here Anand Behari Lal chose to enter into a different kind of transaction. He chose to purchase the property in prasenti with all such defects of title as there might be in it for a consideration which was to be utilised in financing the litigation. There was no question of getting a return of his money or getting anything back from the vendor.

In the circumstances we fail to see how it can be said to be a loan transaction at all and how the sum of Rs. 19,123 can be deemed to be a business expense. It is true that Anand Behari Lal purchased a defective title and the sale transaction was entered into as a speculation. He was to utilise the sale price towards meeting the expenses of the litigation and if he succeeded he would get a half share in a valuable property if he failed he would lose his money, but this would not change the nature of the transaction nor would it be said that the money spent by him was anything else but a part of the sale price. In the circumstances our answer to both the questions must be in the negative and we decide accordingly.

7. The opposite party is entitled to its cost which we assess at Rs. 400.