# Tejpal Jamunadas vs Commissioner Of Income-Tax, U.P. And ... on 27 October, 1952

## Equivalent citations: AIR1953ALL435, [1953]23ITR123(ALL), AIR 1953 ALLAHABAD 435

## Author: V. Bhargava

## Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. In this reference under Section 66(2), Income-tax Act, the following questions have been referred to this Court for its opinion:

> "Q. 1. Whether there was any evidence to justify the conclusion of the Tribunal that the debt of Rs. 67,186/- became bad before the year under consideration?
>
> Q. 2. Whether the loss of business at Kanpur and at Calcutta can be legally allowed to be set off against the profits of the running business at Mirzapur?
>
> Q. 3. Whether the expenses of the business at Kanpur and at Calcutta can be legally allowed as business expenses of the year under consideration?"

2. Learned counsel for the parties are agreed that the second question does not arise out of the appellate order of the Income-tax Appellate Tribunal and it is, therefore, not necessary to answer that question.

3. The assessee is a firm carrying on business in cloth, money-lending and commission agency etc. with its head office at Mirzapur and its branches at Kanpur and Calcutta. A long time ago, the assessee had advanced a sum of Rs. 67,186/- to Jagannath Bagla, his uncle (his father's sister's husband). In the year of account, the assessee wrote off this sum from his account books and, in his return, he showed it as a bad debt. The Income-tax Officer, however, came to the conclusion that the debt had not become irrecoverable in the account year in question but much earlier in Sambat 1990 and refused to grant the deduction.

4. The other point in dispute was that the two branches at Kanpur and Calcutta had ceased to do further business in cloth, money-lending and commission agency but the premises and the skeleton

staff were maintained to realise the outstandings of the business. The assessee had claimed that the expenses incurred therefor at those two branches were allowable as proper expenditure under Section 10(2)(xv), Income-tax Act.

5. The first and the third questions, which we are required to decide, arise out of those two matters. As regards the first question, we may mention that the assessee maintained his account on the mercantile system. It is not known in which year the amount was advanced to Jagannath Bagla, uncle of the, assessee. The account was, however, carried forward year after year in the account books of the assessee and in Sambat 1993 he had got an acknowledgment from the debtor which extended the period of limitation by a further period of three years. On the expiry of the period of three years from Sambat 1993 which fell within the account year, the assessee wrote off the amount as bad debt. It was, however, admitted before the Income-tax Appellate Tribunal that the debtor had no assets in Sambat 1990 from which the amount could be realised and that, in the same year, the assessee stopped calculating interest on the amount advanced, and in Sambat 1990 and thereafter, no interest was added to the amount which had been advanced. It was further proved that no attempt had been made to realise the amount after Sambat 1990 and no reason has been given why no such attempt was made. There are no materials on the record from which it could be deduced that the assessee had any hope of realising any part of this debt. From all these facts, the Tribunal came to the conclusion that the amount had become irrecoverable, at least, in Sambat 1990 if not earlier and the assessee was not entitled to claim the amount as a bad debt in the account year in question.

6. Learned counsel has urged that if the assessee had really considered the debt to be a bad debt, there was no reason why he should have got a fresh acknowledgment in Sambat 1993 so as to extend the period of limitation by another three years. Learned counsel has pointed out that the assessee lived in hope all these years and it was only when the debt became time-barred that he gave up all hope of its recovery.

7. Section 10(2)(xi), Income-tax Act, on which reliance is placed, runs, as follows:

> "10(2)(xi). When the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation 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."

Since this amendment in 1939, there can be no question that it was for the Income-tax Officer to decide whether a particular debt is irrecoverable or not and the mere fact that the assessee had lived in hope would not be of any assistance to him unless the Income-tax Officer were to come to the conclusion that there was some basis for that expectation. Before the amendment, the point arose out of a decision of the Judicial Commissioner, Central Provinces, and their Lordships of the Privy Council in the case of -- 'Commissioner of Income-tax, C. P. & Berar v. S. M. Chitnavis', AIR 1932 P C 178 (A) decided the point and in the light of that decision the amendment appears to us to have

been made to provide statutory authority for what their Lordships had laid down in that case. In that case, the Judicial Commissioners had held that the assessee was the sole person to decide whether a debt was bad and when it became bad. Their decision was based on the following reasonings:

> "The assessee must, for obvious reasons, be the sole arbiter of his own rights and privileges as regards the business he conducts in his own interests. What is to his interest, and what is prejudicial to him, must depend upon his own decision. It therefore follows that on the question whether to treat any particular debt as bad or irrecoverable, his word or decision must be final; for he alone is or can be the judge of the risks, chances and circumstances which may affect the recovery or non-recovery of that debt from his debtor."

Discussing these observations, their Lordships of the Judicial Committee held:

> "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 any one else."

Their Lordships further went on to hold that "the mere fact that a debt was incurred at a date beyond the period of limitation will not of itself make the debt a bad debt; still less will it fix the date at which it became a bad debt. A statute-barred debt is not necessarily bad; neither is a debt which is not statute-barred necessarily good. The age of the debt is no doubt a relevant matter to take into consideration."

The amendment, no doubt, provides that the Income-tax Officer cannot treat as a bad debt any amount in excess of the amount written off as irrecoverable by the assessee himself, but if the assessee writes off a particular sum as a bad debt in a particular year, the amended section does not prevent the Income-tax Officer from considering whether a debt so written off was irrecoverable or not and when it became irrecoverable. The question, as their Lordships of the Judicial Committee have said, is a question of fact to be decided on the materials placed before the Tribunal. The Tribunal had before it several circumstances which we have quoted above and, as against them, it had the fact that the assessee had continued to carry over and bring forward the amount of debt in his account books year after year and in Sambat 1993 got an acknowledgment to extend the period of limitation. On a consideration of all the facts and circumstances the Tribunal came to the conclusion that the debt had become irrecoverable in Sambat 1990. It is not for us to consider whether, on the same facts, we would have come to the same or to a different conclusion. All that we are entitled to see is whether there was material on which the Tribunal could come to the conclusion arrived at by it. We fail to see how it can be said, in view of the facts and circumstances detailed in the appellate order of the Tribunal, that there was no material for the finding arrived at by it. Our answer to the first question is, therefore, in the affirmative.

8. We have already said that the second question does not arise.

9. As regards the third question, we are of the view that the question has not been properly framed. From the appellate order of the Tribunal, it does not appear that there were separate businesses at Kanpur and at Calcutta. The appellate order of the Tribunal as well as the second paragraph of the statement of the case show that the assessee had its head office at Mirzapur and its branch offices at Kanpur and Calcutta. It further appears from the second paragraph of the Statement of the case that the same business was carried on at the head office as was carried on in Kanpur and Calcutta. It had to be conceded on behalf of the Department that if the assessee's head office was at Mirzapur and he had merely branches at Kanpur and Calcutta for carrying on the same business, then he was entitled to deduct from his business income the expenses incurred in connection with the maintenance of the staff for the realisation of the outstandings at Kanpur and Calcutta and in connection with the rent of the premises at these two places. We, therefore, with the consent of the counsel, re-frame the question as follows:

> Q. Whether the expenses of the branches at Kanpur and at Calcutta can, in the circumstances of the case, be legally allowed as business expenses of the year under consideration?
>
> Our answer to this question is also in the affirmative.

10. In view of the fact that, we have answered one question in favour of the Department and another in favour of the assessee, we direct parties to bear their own costs.