

## **Gurucharan Prasad Jagannath Prasad vs Commissioner Of Income-Tax on 19 September, 1950**

**Equivalent citations: AIR1951ALL556, [1951]19ITR42(ALL), AIR 1951 ALLAHABAD 556**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

V. Bhargava, J.

1. This is a reference under Section 66 (1), Income-tax Act, in which the following questions have been referred to us for opinion:

"(1) Whether in view of the previous history of the assessment of the firm and the manner of their keeping accounts and their past conduct, the properties allotted to the applicant under the composition schema approved by the High Court in 1923 were part of the stock-in-trade of the assessee's money-lending business or were a part of the capital stock?

(2) Whether, in the circumstances of this case, the alleged loss of Rs. 1,13,170/- claimed by the assessee constitutes a bad debt of the assessee's money-lending business ?

(3) Whether, in the circumstances of this case, the sum claimed by the assessee in respect of loans made by him became irrecoverable in terms of Section 10 (2) (vi) (xi ?), Income-tax Act, in the course of the accounting year or in 1923 when the composition scheme was enforced ?"

2. The assessee had advanced a loan of one lac of rupees to one Lala Lachhman Das on foot of a mortgage-deed, dated 29-12-1918. A further advance of Rs. 14,000/- was made under another mortgage-deed, dated 16-3-1914. Subsequently, a two-storeyed house with some shopa belonging to the debtor, Lala Lachhman Das, were purchased by the assessee for a sum of Rs. 33,000/-. On 18-3-1914, proceedings under the Insolvency Act were started against the debtor, Lala Lachhman Das. In those proceedings, the sale of the house and the shops to the assessee were set aside. The consideration of Rs. 33,000/- which had been paid by the assessee to Lala Lachhman Das, thus also became a loan due from Lala Lachhman Das to the assessee. The total amount due including

interest thus became Rs. 2,30,069/-. During insolvency proceedings, all the creditors of Lala Lachhman Das entered into a composition scheme and, under this scheme, the assessee received a two-storeyed house and some shops situated in Chandani Chowk near Kucha Baijnath, Delhi, in full satisfaction of his debts due from Lala Lachhman Das. The house and the shops remained in possession of the assessee till the year 1941 and they were sold during the relevant year of account. This reference relates to the year of assessment 1942-43. The price fetched at a sale was Rs. 1,15,000/- and the assessee after taking into account realisations on hundis and expenses claimed that in this year he had suffered a loss to the extent of Rs. 1,13,170/- as being bad debt which could not be realised from Lala Lachhman Das. The case of the assessee was that the assessee throughout held the properties which he had received under the composition scheme as the stock-in-trade of his money-lending business and never treated them as his own properties which had been received in satisfaction of his debts. He kept the properties as stock-in-trade and wanted all the time to convert them into money for the purpose of carrying on his money-lending business. The time for the transfer of properties was, however, not appropriate and, therefore, they were sold in the year of account relating to the assessment year 1942-43. During all this period, the whole amount of Rs. 2,30,069/- was shown by the assessee in his account-books as the amount of loan due from Lala Lachhman Das. It was, therefore, argued that it was on the sale of these properties that the assessee made adjustments of the loan and then suffered a loss to the extent of Rs. 1,13,170/- in this business transaction.

3. In this case, the most important circumstance that confronts the assessee is that the assessee received these properties in the year 1923 and they were sold in the year 1941. The assessee kept those properties with him for a period of 18 years. During this period, obviously, these properties or their value were not available to the assessee for carrying on his money-lending business. His retention of these properties for such a long period clearly indicates that he treated these properties as his own property which had been received by him in satisfaction of his debts due from Lala Lachhman Das. He did not convert the properties almost immediately into cash for the purpose of carrying on his money-lending business. Had he done so, it might have been possible for him to argue that he had acquired those properties only temporarily and had never intended to convert his loan into properties. His intention merely was to realize as much of his loan as he could and since the circumstances compelled him to take the properties in lieu of the loan, he did so; and then subsequently converted them into cash as soon as he found it possible to do so. In the present case, the retention of the properties for such a long period of 18 years is a conduct on the part of the assessee which leads to the inference that these properties were received in satisfaction of his debts due from Lala Lachhman Das and were retained by him as such. There is a further circumstance that, during all this period, the assessee received income from these properties but he never credited it in the loan account of Lala Lachhman Das which he should have done, in case he was acting on the assumption that those properties were the stock-in-trade of his money-lending business and were not properties received by him in lieu of his debts due from Lala Lachhman Das. The mere fact that the assessee continued the loan account of Lala Lachhman Das in spite of having received the properties cannot convert these properties into stock-in-trade.

4. As a result, we answer the questions referred to us as follows : (1) The properties allotted to the applicant under the composition scheme approved by the High Court in 1923 were not part of the

stock-in-trade of the assessee's money-lending-business and were a part of the capital stock. (2) In the circumstances of this case, the alleged loss of Rupees 1,13,170 claimed by the assessee does not constitute a bad debt of the assessee's money-lending business. (3) In the view that we have taken on the first question, this question does not arise and needs no answer.

5. The department will be entitled to its costs from the assessee which we fix at Rs. 400/-.