

Sadi Ram Ganga Prasad vs Commissioner Of Income-Tax, U. P. on 23 November, 1954

Equivalent citations: [1955]28ITR316(ALL)

JUDGMENT

MALIK, C. J., and MOOTHAM, J. - In the year 1947 a reference was made to this Court under section 66(I) of the Indian Income-tax Act and the question referred to us was as follows :-

"Whether in the circumstances of this case the loss of Rs. 10,000 arising out of the loss of title and possession of the house under the High Court decree dated 26th October, 1943, during the accounting year was a revenue loss admissible under the provisions of section 10(2)(xi) or a capital loss."

The reference came up before a Bench of this Court on the 17th of December, 1951, and, in view of the provisions of section 10(2)(xi), the Bench asked for a further statement of the case. On the 13th of October, 1952, the Tribunal sent up a further statement of the case and it has now re-framed the question as follows :-

"Whether on the facts and in the circumstances of this case the loss of Rs. 10,000 arising out of the loss of title and possession of the house property under the High Court decree dated 26th October, 1943, was a business loss, which the assessee was entitled to set off against his business profits for the assessment year 1944-45."

The assessee carried on business "in speculation and ran a flour mill." This appears from the statement of the case. He did not carry on any money lending or banking business. In the books of the assessee of the accounting year, samvat 1988-89, a sum of Rs. 15,202-15 appeared to be due to him from Messrs. Dhaunkal Ram Mani Ram. This amount was due "in respect of hundis and the price of goods." On the 29th of August, 1932, a sale deed was executed by Kanhaiya Lal and Bisheswar Prasad, proprietors of Dhaunkal Ram Mani Ram, in favour of the assessee and a house valued at Rs. 10,000 was transferred to him. The assessee wrote off the balance of Rs. 5,202-15 as a bad debt and this amount was allowed by the Income-tax Officer as an allowable deduction in the assessment year 1933-34. The assessee obtained possession of the house and entered it in his books in the property account. There was some litigation started in the year 1934 and as a result of that decision the assessee lost the house as it was held that the transferors had no right to transfer the same. The decision of the High Court is dated the 26th of October, 1943. The assessee claimed the amount of Rs. 10,000 as a bad debt and wanted the amount to be deducted out of the taxable income of the assessment year 1944-45. The Appellate Tribunal decided the point in this way :

"The last objection about the loss of the house due to the High Court decree does not appeal to us as sound. The loss arose in the following circumstances :-

Rs. 15,000 were due to the assessee from one Dhaunkal Ram Mani Ram. The debtor transferred a house to him for a sum of Rs. 10,000 in the year 1932. The balance of Rs. 5,000 was written off as a bad debt, and is said to have been allowed by the department in the appropriate assessment, i.e., in 1933-34. The assessee in this manner got the house for a sum of Rs. 10,000 which was due to him. The acquisition of the house in 1932, became a capital asset and its loss due to the defective title of the vendor must be treated as a capital loss and not a revenue loss."

Section 10(2)(xi) deals with two distinct types of cases, one, where an assessee carries on banking or money-lending business, and the other, where the assessee does not carry on banking or money-lending business but maintains his accounts on the mercantile basis. The facts were not set out in the statement of the case whether the assessee was carrying on money-lending business and whether his accounts were kept on a mercantile or cash basis. In the previous order of this Court dated the 17th of December, 1951, the Tribunal was asked to make a further statement. In the statement of the case now made the Tribunal has materially altered the question referred to us for our decision. From the question that had been previously referred to us for decision it appeared that the deduction was claimed under section 10(2)(xi). Now it is claimed as a business loss. Mr. Pathak, on behalf of the assessee, has also urged that it was a business loss and that the question of the applicability of section 10(2)(xi) did not, therefore, arise.

We may, however, deal with the applicability of section 10(2)(xi) also as the argument was addressed to us in the alternative and in the reference originally made the question was referred to us for decision and that was the only question that arose for decision on the appellate order of the Tribunal.

Under the first half of section 10(2)(xi) profits or gains have to be computed after deducting therefrom bad and doubtful debts due to the assessee in respect of his business, profession or vocation provided his accounts are not kept on the cash basis. Mr. Pathak has urged that as the debtors, Dhaunkal Ram Mani Ram, were not in a position to pay the amount of Rs. 5,000 odd, which sum was treated as a bad debt and was accepted as such by the Income-tax Officer, it follows that the debtors were not able to pay the larger sum of Rs. 10,000 and, therefore, gave a house in part payment of the debt and when that house was lost to the assessee the old debt must be deemed to have revived and it must now be treated as a bad debt under section 10(2)(xi). The alternative argument advanced by him is that this is a business loss and in computing the profits of the business this amount has to be taken into account and no question of the applicability of section 10(2)(xi) arises.

The second point was not raised before the Appellate Tribunal. We do not know whether this amount due from Dhaunkal Ram Mani Ram related to any business transactions nor do we know that it is a loss. The case was decided by the High court on the 26th of October, 1943, and the accounting period ended only two days later on the 28th of October, 1943. If Mr. Pathak's contention is right that on the High Court holding on the 26th of October, 1943, that the vendors had no saleable interest in the property the original debt revived, then he must further show that the amount was not recoverable from Dhaunkal Ram Mani Ram. No attempt was made to realise the

money from them, nor was any attempt made to prove that the debtors were not in a position to pay the amount. An affidavit was filed on the 22nd of July, 1952, in which it was stated that "at the time the High Court gave the decree in favour of the third party as aforesaid, the financial position of the said Messrs. Dhaunkal Ram Mani Ram was almost nil and they had no means whatsoever to pay their debt falling due as a result of the said decree." The Tribunal has pointed out that there was nothing on the record to show that the assessee had made any demands from Dhaunkal Ram Mani Ram after the passing of the High Court decree on the 26th of October, 1943. It has further pointed out that during the chargeable accounting period Dhaunkal Ram Mani Ram had made a profit of Rs. 3,872 which was assessed to income-tax in the assessment year 1944-45. The assessee did not carry on money-lending business. The assessee's business was found to be "speculation and running of flour mill." There is nothing to show how the liability of Dhaunkal Ram Mani Ram arose and it cannot, therefore, be claimed that it arose out of the business carried on by the Assessee. On the facts stated in the appellate order and the statement of the case there is, therefore, nothing to show that this was either a loss or that it was a loss arising out of business.

Coming to the first point that it was a bad debt, learned counsel's argument is that as the vendors had no saleable interest in the property the sale deed executed on the 29th of August, 1932, was a void document and it did not, therefore, affect the original position and the sum of Rs. 10,000 must, therefore, be deemed to be still a subsisting debt, which, according to learned counsel, was a bad debt in 1932-33 and continued to be a bad debt in the year 1943. If it was a bad debt in the year 1932-33 then it is not at all relevant to the accounting period 1942-43 with which we are concerned. The proper way to construe the legal position appears to us to be that when Dhaunkal Ram Mani Ram sold the house to the assessee for Rs. 10,000, and the debt was adjusted as paid off to that extent in the books of account, the assessee must be deemed to have paid to the vendors the sale price with one hand and received from the vendors with the other Rs. 10,000 in part satisfaction of the debt due from them. The debt was thus paid off and when the sale deed was held to be invalid the old liability revived, which could be enforced either in accordance with the terms of the express covenant contained in the sale deed or on the basis of the implied covenant under section 55 of the Transfer of Property Act. The assessee's case was that as the house was lost to him he was entitled to claim 10(2)(xi). From the facts stated that the property was purchased not as stock-in-trade but as a capital accretion, the loss caused to the assessee by the house going out of his possession cannot be treated as a revenue loss or as a bad debt.

The answer to the question that has been referred to us must, therefore, be in the negative.

The assessee must pay the cost of the other side which we assess at Rs. 300.

Reference answered in the negative.