

## **R.B. Seth Champalal Ram Swarup vs Commissioner Of Income-Tax, East ... on 20 March, 1967**

**Equivalent citations: [1968]68ITR181(SC), AIR ONLINE 1967 SC 69**

**Bench: J.C. Shah, S.M. Sikri**

### **JUDGMENT**

Sikri J.

1. The following three questions were referred under section 66(2) of the Income-tax Act, 1922 :

"(1) Whether there was any material before the Tribunal for the finding that neither of the two amounts of Rs. 3,25,000 and Rs. 16,005 was a bad debt arising during the course of the money-lending business of the assessee ?

If the answer is in the affirmative :

(2) What was the true nature of the transactions and whether in view of the true nature of the transactions, the debts could still be claimed as bad debts in working out the assessable income of the assessee ?

(3) Whether there was any material on which the Tribunal could arrive at the finding that the debts had become bad prior to the year of account in question ?"

2. The relevant facts out of which these questions arose were stated by the Tribunal in the statement of the case and are briefly as follow : The assessment year in question is 1942-43 and the relevant accounting year is Samvat year 1997-98, corresponding to October 1941. The appellant, R. B. Seth Champa Lal Ram Swarup (hereinafter referred to as the assessee), was a joint Hindu family headed by the karta, Moti Lal. During the accounting year a sum of Rs. 3,25,000 was due to the assessee from one Shanthi Lal, who carried on business as proprietor of M/s. Amolakchand Mewaram. Shanti Lal is the younger brother of Moti Lal and had been taken in adoption by a cousin of Motilal. M/s. Amolakchand Mewaram had a current account with the assessee for a number of years in which there were large cash payment on either side. This account was also credited with sales of cotton and other goods made by the assessee on behalf of M/s Amolakchand Mewaram, while the account was debited with speculation losses and differences paid by the assessee on M/s Amolakchand Mewarams account. In Samvat year 1987-88, the year ending November, 1931, advances made to M/s. Amolakchand Mewaram in this account rose up to Rs. 11 lakhs. During this year the assessee took a mortgage of the immovable property of M/s. Amolakchand Mewaram for Rs. 3 lakhs and credited the amount to the current account, the debit being given to a new account styled "Amolakchand Mewaram Mortgage account". In the next accounting year the assessee took over the interest of M/s. Amolakchand Mewaram in the managing agency of the Edward Mills

Limited and also the shares of the Edward Mills Limited for Rs. 4,50,000 for which also a credit was given in the current account. In the same year on November 3, 1932, the assessee also obtained a pro-note from M/s. Amolakchand Mewaram for Rs. 3,25,000 crediting the amount to the current account, the debit for which given to a new account styled "Amolakchand Mewaram pro-note account". After these adjustments the current account was left with a debit balance of Rs. 25,626. Thereafter, there were only petty transactions and adjustments.

3. At the commencement of the Samvat year 1994-95, there was a debit balance of Rs. 9,017. The assessee purchased Amolakchand Mewaram's card of the East India Cotton Association for a sum of Rs. 20,000 resulting in a credit balance in favour of M/s Amolakchand Mewaram of Rs. 11,253. Thereafter there was only one debit entry of Rs. 980 in Samvat year 1996-97, and in the relevant accounting year the balance was to the credit of Amolakchand Mewaram in the sum of Rs. 10,273. The two new accounts, Amolakchand Mewaram Mortgage account and Amolakchand Mewaram pro-note account had been carried forward from year to year but no interest had been charged on these accounts. In the current account, Interest had been charged up to the Samvat year 1988-89 (1931-32) only and not thereafter.

4. The assessee was adjudged insolvent by the Bombay High Court in July, 1938. Thereafter, a scheme of composition was sanctioned by the same High Court and the adjudication order was unnullled on April 15, 1941.

5. The facts relating to the second debt of Rs. 16,005 were these. This amount was due from one Mansukh Lal Panthu Lal. A decree from the Bombay High Court was obtained by the assessee against the debtor in 1932. The decree was executable for 12 years, but as a matter of fact no effort was made to execute the decree and to recover this amount.

6. On these facts, the Appellate Tribunal held that the money was not advanced to the firm Amolakchand Mewaram in the course of money lending business. It further held that the debt of Rs. 3,25,000 became bad long ago. Regarding the bad debt of Rs. 16,005 the Tribunal also held that the amount was not advanced in the course of money-lending business and that the debt had become bad prior to the year of account.

7. The High Court answered all the three questions against the assessee and in favour of the department. The assessee having obtained special leave, the appeal is now before us.

8. It is not necessary to deal with the questions (1) and (2) because if the answer to the question (3) is given against the assessee the appeal must fail. The High Court in rejecting the claim of the assessee observed :

"In order to succeed in claiming that a debt as become bad it is incumbent upon the assessee to establish that the debt was good immediately at the commencement of the relevant year of account and that it had become bad during the year of account. In the present case the pro-note for Rs. 3,25,000 was taken as far back as the 3rd November, 1932, and the assessee is claiming it as bad in the year ending October,

1941, i.e., almost after a decade. During this decade the assessee did not charge any interest, nor did it take any legal steps to recover amounts due. The evidence of the assessee and the debtor apart from it being only self-serving statement is extremely vague and it does not at all show that there could possibly have been any way of hope still lingering in the assessee's mind that any part of this debt of Rs. 3,25,000 could be recovered. No doubt the debtor has giving a long list of suits in which he was expecting that decrees would be passed in his favour but most of those expectations were shattered long before the relevant year of account. At best, he could only have had hope of realising something from a decree against Baij Nath Gauri Dutt. But even that suit was decided by the Civil Judge of Mathura on the 29th March, 1940, against him. Even if this could be said to have been a flicker of hope it was completely snuffed in the assessment year 1941-42 and no possible hope could have survived justifying the assessee in claiming the debt as bad in the relevant assessment year 1942-43. On a consideration of the evidence on the record it cannot be said that there was no material for the Tribunal to have come to the conclusion that the two debts had become bad prior to the year of account."

9. The learned counsel for the assessee tried to argue that there was not sufficient material before the Tribunal for the findings arrived at. We pointed out to him that it was not open to him, on the question as framed, to go into the question whether the Tribunal should or should not have come to the findings it did. What we are concerned with is whether there is any material on which the Tribunal could arrive at the findings that the debts had become bad prior to the year of account in question. From a perusal of the findings of the Tribunal and the reasoning of the High Court it is quite clear that there was material for the Tribunal to have come to the conclusion that the two debts had become bad prior to the year of account.

10. The material on which the Tribunal could well come to the conclusion that the debts had become bad earlier than the relevant accounting year is in brief as follows :

"1. Regarding debt of Rs. 3,25,000 :

(1) Shantilal was the younger brother of Motilal;

(2) On November 3, 1932, when the pro-note for Rs. 3,25,000 was executed the assessee had taken over major assets of the debtor; (3) The last asset, viz., card of East India Cotton Association, was taken over for a sum of Rs. 20,000 in the Samvat year 1944-45; (4) No interest was charged on the two accounts, Amolakchand Mewaram mortgage account and Amolakchand Mewaram pronote account; and (5) No legal steps were taken to recover this debt all this time.

II. Regarding the debt of Rs. 16,005. :

Although decree was obtained by the assessee against the debtor in 1932, no steps were taken to execute the decree."

11. In the result the appeal fails and is dismissed, but in the circumstances we make no order as to costs.

12. Appeal dismissed.