Commissioner Of Income-Tax And Excess ... vs Sri R.S.A. Sankara Ayyar on 1 October, 1951

Equivalent citations: AIR1953SC434, [1951]20ITR597(SC), AIR 1953 SUPREME COURT 434

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

Mahajan, J.

1. This is an appeal from the judgment and order of the High Court of Judicature at Madras dated 26th August, 1948, delivered on a reference made to it by the Income-tax Appellate Tribunal under S. 66(1), Income-tax Act, 1922, (Act 21 of 1922).

2. The respondent was the manager of a Hindu undivided family. Prior to 1931, he was carrying on a money-lending business in partnership with one Kasi Ayyar. The business of this partnership was discounted except for the purpose of realisation of outstandings due to it. One of the outstandings was a debt due from the firm of Kadir Pillai Marakayar on a mortgage. A final decree was obtained against the said firm in the year 1940. In execution of that decree certain lands of the debtor were sold. On 11th September 1942, a sum of Rs. 16,395-14-10 was due under the decree when the two partners decided to close the accounts of the partnership and in pursuance of that decision the outstandings were divided between them. On 12th September, 1942, the respondent entered a sum of Rs. 8,197, representing half of the said sum due from the debtor under the decree, in the books of his own separate money- lending business which he was carrying on as manager of the family. A separate account was opened in these books in the name of the debtor. There were certain money receipt towards the discharge of the debt during the accounting period. The total amount realised subsequent to 12th September, 1942, came to Rs. 4,664 and the respondent credited half of this amount, i.e., Rs. 2,332, in his account as his share. On the 5th October, 1943, the respondent wrote off the sum of Rs. 5,880, which was still due to him from the debtor out of the amounting of Rs. 8,197, as irrecoverable.

3. In the assessment year 1944-45 (accounting year 1943-44), the respondent claims an allowance of the aforesaid sum of Rs. 5,880 as a bad debt under Section 10(2) (xi) of the Act. The claim was disallowed by the Income-tax Officer. On appeal, the Appellate Assistant Commissioner allowed the claim and held that the bad debt had been taken over by the respondent as a part of the money-lending business and that the loss was sustained in the separate business carried on by him.

On appeal, the Income-tax Appellate Tribunal confirmed this decision. On an application made to it, the Tribunal referred the following two question for the decision of the High Court :-

> "(1) Whether there is any material for the Tribunal's finding that the bad debt of Rs. 5,880 claimed by the assessee arose in respect of a loan made in the ordinary course of his money-lending business, within the meaning of Section 10(2) (xi) of the Income-tax Act ?
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> (2) Whether, on the facts and in the circumstances of the case, the assessee's claim to write off the sum of Rs. 5,880 towards his share of the irrecoverable portion of the decree debt in the assessment year is admissible under section 10(2) (xi) of the Income-tax Act ?"

4. The reference was answered in the affirmative by the High Court. It, however, granted a certificate to file an appeal to this court.

5. The only point to be decided in this appeal is whether, on the facts and in the circumstances under which the sum of Rs. 8,197 was dealt with by the respondent it is, a permissible deduction from his income under Section 10(2) (xi) of the Income-tax Act in the assessment year.

6. The High Court on examining the accounts of the partnership as well as of the respondent reached the following conclusion :-

> "In the present case, the debt had ripened into a decree in favour of both the partners, and we fail to see what novation there could be after decree. There is no authority to support the contention on behalf of the Department that there should be a novation or an act by the debtor also, before it can be held that the old loans though treated as part of the stock-in-trade of the new business can be held to be loans made in the ordinary course of the new business."

7. While granting leave to the petitioner, the learned Judges said as follows :-

> "The construction to be placed on the above words (i.e. 'loans made in the ordinary course of such business') is of great importance in this province having regard to the practice prevalent among Nattukottai Chettis in particular who conduct family money-lending business, that at partition among the coparceners of the family the debts due to the undivided family firm are allotted between the several coparceners who, after the division set up independent money lending business treating the debts assigned to them as debts of the new business."

8. The learned Attorney-General argued that in this case after the business of the partnership was closed, the outstanding of the old business taken over by the respondent became a capital asset of the assessee's new business and could not be held to be loans made in the course of the new business. We are unable to uphold this contention. The Tribunal, on a consideration of the entries in

the books of the partnership and of the assessee produced before it, reached the conclusion that the respondent had treated his share of the outstanding debt due under the decree as a part of his money-lending business and as a loan given by the assessee's money-lending business to the debtor. The learned Attorney-General strenuously contended that the entries in the books of account could not possibly support the conclusion reached by the Tribunal, and that there were no materials for reaching that finding. We are unable to agree. The entries are fully capable of the construction 'placed on them by the Assistant Commissioner and the Income-tax Appellate Tribunal. The facts are that when a division was made between the partners on the 12th September 1942, the books of the partnership were closed, an account of the debtor was opened in the family books and he was debited with the amount of Rs. 8,197 indicating that he became a debtor of the new partnership of the business and the debt became a loan advanced by the assessee's money-lending business to the debtor. When later on there were payments the debtor received credit for such payments in this account with the respondent and must have got a discharge receipt from him. He was thus recognised as a debtor of the new firm and the amount in question being a loan of the money-lending business of the respondent it was an admissible deduction under Section 10(2) (xi) of the Act.

9. In our opinion, the conclusion of the High Court is correct and the appeal is dismissed with costs.

10. Appeal dismissed.