

Calcutta High Court

Commissioner Of Income-Tax ... vs Birla Bros. (P) Ltd. on 29 August, 1966

Equivalent citations: AIR 1967 Cal 530

Author: P Mukheji

Bench: P Mukharji, C Laik

JUDGMENT P.B. Mukheji, J.

1. In this Income-tax Reference the main question is:

"whether on the facts and in the circumstances of the case the sum of Rs. 5,60,199 was an admissible deduction in computing the business profits of the assessee."

2. That was the question which the Tribunal at first referred to the High Court. This Court, however, asked for a further statement on the following questions:--

"1 Whether there is any evidence in support of the Tribunal's finding that the assessee company has stood guarantee for the loan given to Messrs U.P Sales Corporation Ltd. by the Gwalior Industrial Bank Ltd.

2. If the answer to Q. 1 above be in the affirmative then whether there is any evidence to show that the assessee company stood such guarantee in the ordinary course of its business.

3. If the answer either to Q. 1 or Q 2 above be in the negative then whether the sum of Rs. 5,60,199 was allowable as a deduction in computing profits of the assessee."

3. To appreciate the points of law and the state of evidence of this case for appeal to the Supreme Court, it will be appropriate to pin-point the relevant facts. The assessee is Birla Brothers Private Limited. They acted as Managing Agent of various companies, one of which was Messrs, Starch Products Limited.

4. Now another company, Messrs. U.P. Sales Corporation Limited was the selling agent of that other company. Messrs. Starch Products Limited. The assessee company stood as a guarantor for a loan for Rs. 6,00,000 borrowed by selling agent Messrs. U.P. Sales Corporation Ltd. from the Gwalior Industrial Bank Ltd. which again was also one of the concerns of the assessee. During the year 1953-54 the assessee company claimed deduction in respect of Rs. 5,60.199 as bad debt in the account of Messrs. U.P Sales Corporation. What happened was that Messrs. U.P. Sales Corporation Limited had borrowed the sum of Rs. 6.00.000 from the said Bank and the assessee stood as guarantor for such loan. This loan incurred by U.P. Sales Corporation Ltd. could not, however, be repaid on the 2nd August. 1948 What is worse is that this Gwalior Industrial Bank Ltd. went into liquidation and the assessee within three days thereafter paid the whole amount of this loan to this Bank on 5-8-1948 by cheque drawn on the United Commercial Bank Limited. The assessee's whole case is that this amount was paid to the Bank as a guarantor on behalf of Messrs U.P Sales Corporation Ltd. As the latter also went into liquidation on the 23rd March, 1952. and as there is no chance of realising the amount the assessee company wrote it off as bad debt at the end of the

accounting year which commenced on the 31st October, 1951, ending on the 18th October, 1952, the assessment year being 1953-64.

5. The Income-tax Officer disallowed this claim for deduction under Section 10(2) (xi) of the Income-tax Act. The Income-tax Officer found as a fact:

- (i) that there was no Directors resolution authorising the furnishing of the alleged guarantee,
- (ii) that the document purporting to give file guarantee was not executed on any regular agreement or stamped paper,
- (iii) the originals of the papers were not produced, and
- (iv) that the auditors had not mentioned the guarantee or contended liability in the balance sheet.

That decision of the Income-tax Officer was the subject of appeal to the Appellate Assistant Commissioner who found that although the assessee actually stood as a guarantor for the loan on behalf of the U.P. Sales Corporation Ltd. and advanced the loan as a matter of commercial expediency yet he concurred with the conclusion of the income-tax Officer on the ground that the assessee did not finance the loan in course of its money lending business.

6. Against that order there was an appeal to the Appellate Tribunal. The Appellate Tribunal found that the guarantee was made in the larger interest of the assessee's business and the payment was made. The Appellate Tribunal also found that if such guarantee was not given Messrs. Starch Products Limited, one of the managed companies, would have had to give extended credit to the selling agent and this was only possible if the managed company in its turn was financed either by the Managing Agents or a third party. The Tribunal, therefore, allowed the assessee's claim for loss of this money. It is out of these proceedings that the present questions arise. The questions can be approached from two broad points of view argued before us at the Bar; one relates to the major question of substantial importance and far-reaching significance and that "is how far the construction of the Tribunal of the expression "in the ordinary course of such business" appearing in Sec. 10 (2)(xi) of the Income-tax Act is correct in law. It has been contended for the Commissioner that the selling agent of the managed company could not claim financial assistance from the assessee and if it did such lending or financial assistance would not amount to the assessee's ordinary course of business within the meaning of that section. The need was not the need of the managed company of the assessee but the alleged need was of the selling agent of the managed company of the assessee.

7. The question is whether it is directly incidental to the assessee's carrying on of the business or whether it is too remote for the purpose of the scope of the Section 10(2)(xi) of the Income-tax Act and file interpretation of the expression "In the ordinary course of such business". The question in this case acquires greater significance by the application of the doctrine of "business expediency" as propounded by Viscount Cave in *Atherton v. British Insulated & Helsby Cables Ltd.*, (1926) 10 Tax Cas 155 at p. 191. Viscount Cave had said that even a voluntary payment on the ground of

commercial expediency and in order to indirectly facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purpose of the trade. The question raised by the Commissioner is of far-reaching importance as far as he wants to know the limits of such business expediency in the context of the interpretation of Section 10(2)(xi) of the Indian Income-tax Act. On that ground alone we are satisfied that this is a fit case for appeal to the Supreme Court within the meaning of Section 66A(2) of the Income-tax Act and we grant a certificate certifying that the case is a fit one for appeal to the Supreme Court.

8. Mr. Mitra, learned Standing Counsel has urged before us that we should limit the question while granting the certificate. We are afraid that that course is not open to us. We do not accept Mr. Mitra's argument that such limitation can be made in the Certificate under Section 66A(2) of the Income-tax Act. What we certify under this provision of the Income-tax Act is that "the case" is a fit one for appeal to the Supreme Court. The word 'case' in Sec 66A(2) of the Income-tax Act is the whole case and not a particular point of law arising in that case. To take any other view would seem to be against the proper interpretation of this section and also against common sense. A point of law arising in a case which is of substantial importance and which this High Court thinks should be certified as a fit case for appeal to the Supreme Court cannot be appropriated, if it is divorced from the context of the whole case. Unless the whole case is certified a decision on the point of law therein, detached from the conspectus of the whole case, will make things impossible for it can never be ultimately known until the final decisions which fact in the entire case will have a repercussion on the point of law intended to be determined.

9. Lastly the appeal contemplated under Section 66A(2) of the Income-tax Act once certified by the High Court puts the case at large before the Supreme Court which alone has then the jurisdiction to ultimately decide and dispose of the case as best as it thinks fit. It is not for this Court to limit the hands of the Supreme Court.

10. Finally it is necessary to refer to the fact that the language in Section 66A (2) of the Income-tax Act which provides "an appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under Section 66 in any case which the Court certifies to be a fit one for appeal to the Supreme Court", means that the appeal that is taking place to the Supreme Court is an appeal from the whole judgment of the High Court delivered on the reference made under Section 66. We do not think that by a Certificate under this Section 66A(2) of the Income-tax Act, the High Court can limit this statutory appeal from only a part of that judgment on the Reference. In this section the contrast between the provisions of Section 66A(2) of the Income-tax Act with the celebrated provisions of Articles 132, 133 and 134 of the Constitution of India shows that many of the limitations stated therein for a certificate in some cases are not there under Section 66A(2) of the Income-tax Act.

11. There is another approach to the question raised here. Mr. Pal, for the Commissioner of Income-tax, has drawn our attention to the fact that the other questions asked also raised substantial questions of law. In particular, he draws our attention to the observation in the judgment of this High Court in the Reference under consideration that "It appears from the statement of the case under Section 66(2), that the Tribunal did not specifically comply with the

order of this Court but instead has generally referred to the materials which were placed before the Income-tax Officer and the Appellate Assistant Commissioner, with the result that in answering the question we have to look into the details of the evidence as appearing in the paper book"

That being so, Mr. Pal, for the Commissioner of Income-tax, argued that as the Tribunal had not complied with the order or direction of this High Court, this High Court on the reference on the supplementary questions should not have answered the questions raised but should have acted under Section 66(4) of the Act and sent the case back to the Tribunal specially because these supplementary questions raised related to the controversy whether there was any evidence in support of the Tribunal's finding Mr. Mitter, for the assessee. took us through the records to show that there was some evidence in which the Tribunal could come to the conclusion and. therefore. it was not a question of no evidence at all and, therefore, that part of the question was not a question of law. It is unnecessary for us to proceed further with this aspect of the problem as we are satisfied that the major question involved in this Reference makes the case a fit one for appeal to the Supreme Court as indicated above We need only record that Mr. Pal. for the Commissioner of Income-tax, contends that there is no evidence whatever to support the Tribunal's finding that if such a guarantee was not given, Messrs Starch Products Ltd one of the managed companies, would have had to give extended credit to the selling agent and that this could only be possible if the managed company in its turn was financed either by the managing agents or a third party. It was here that he challenged the conclusion of the Tribunal to be a mere surmise, conjecture and a speculation unsupported by any evidence at all.

12. There will, therefore, be an order IB terms of prayer (a) of the petition granting a certificate that this is a fit case for appeal to the Supreme Court. There will be a further order in terms of prayer (c) of the petition admitting the petition and transmitting it to the Supreme Court under the seal of this Court with a correct copy of the records and proceedings material to the case.

13. The costs of this application will be costs in the appeal Laik, J.

14. I agree with the order made.