Supreme Court of India
Amarchand Sobhachand vs Commissioner Of Income-Tax, ... on 21 January, 1971
Equivalent citations: AIR 1971 SC 720, 1971 82 ITR 591 SC, (1971) 1 SCC 458, 1971 3 SCR 415, 1971 III UJ 267 SC
Author: Shah
Bench: J Shah, A Grover, K Hegde, V Ramaswami
ORDER Shah, J.

15. By our order dated July 29, 1969, we called for a supplementary statement of case on the question reframed in the light of the two branches of section 10(2) (xi) of the Indian Income-tax Act, 1922. We have now received a statement of case from the Tribunal. The Tribunal has set out in great detail the arguments advanced before it by the assessee and by the revenue but it has not set out the facts found by it from the evidence on the record in the light of the arguments advanced. The statement of case is intended to be a finding on facts and not a catalogue of the arguments advanced at the Bar. Since the Tribunal has not found the facts we are constrained to send back the case again to the Tribunal for submitting to this court a supplementary statement on facts found by the Tribunal. The Tribunal will submit the statement within three months from the date on which the papers reach the Tribunal.

January 21, 1971 : The matter came for final hearing before J. C. SHAH C.J., K. S. HEGDE and A. N. GROVER JJ.

M. C. Chagla, Senior Advocate (B. R. Agarwala, Advocate of Gagrat & CO., with him), for the appellant.

S. T. Desai, Senior Advocate (R. N. Sachthey and B. D. Sharma, Advocates, with him), for the respondents.

JUDGMENT J.C. Shah, Ag. C.J.

1. M/s. Amarchand Sobhachand a firm registered under the Indian Income-tax-Act, 1922, carried on business at Madras in drugs, chemicals, mercury, camphor and silk yarn and as money lenders. There were two partners of the firm -Mohanlal Sagmal and Seshmal Sobhachand, and Ramniklal and Lakshmichand minors were admitted to the benefits of the partnership, each with 7/32 share in the profits. The appellants had for a long time business relations with a firm styled "Bhojaji Sobhachand" carrying on business at Bombay as importers of yarn and also as agents and adathias. Sobhachand, one of the partners of Bhojaji Sobhachand with 16% share in the profit and loss is the father of Seshmal, Ramniklal and Lakshmichand, partners of the appellants.

2. In the books of account of the appellants which were maintained according to the mercantile system there was a current sarafi account in respect of their transactions with the Bombay firm in which were credited the funds transmitted from Bombay in respect of their business transactions. Entries relating to interest were posted till the end of Samvat Year 2006 in the account on the amount due at the foot of the account. The following is a table showing the balances at the end of the

Samvat years 2003 to 2008 and the interest charged thereon :

Amount Interest At the end of the Samvat Year 2003 Cr. 16,951.00 - " " " 2004 Dr. 1,02,188-4-5 Dr. 2633-9-3 " " " 2005 Cr. 27,815-0-0 Dr. 483-1-9 " " " 2006 Cr. 11,975-0-0 Cr. 1008-7-3 " " " 2007 Dr. 2,02,823-12-3 - " " " 2008 Dr. 2,68,385-1-3 -

3. In the assessment for income-tax of the appellants for the assessment year 1952-53 relevant to the account year Samvat 2007 an item of Rs. 2,03,147-8-0 in the account of the Bombay firm was disallowed by the Income-tax Officer, but in appeal the amount was allowed.

4. In the return of income for the assessment year 1953-54 the appellants claimed allowance for Rs. 2,68,385/-due from the Bombay firm at the foot of their running account as a bad debt written off as irrecoverable. The Income-tax Officer disallowed their claim holding that :

these transactions were mere accommodations which can have no bearing to the regular business carried on by the assessee.

The Appellate Assistant Commissioner agreed with the Income tax Officer. He held that the debt did not arise in the course of the appellants' business as chemists and druggists nor in the course of their money-lending business. The Income-tax Appellate Tribunal accordingly confirmed the order of the Appellate Assistant Commissioner.

5. The assessee firm then applied to the Tribunal to refer the following question to the High Court of Madras :

Whether on the facts and in the circumstances of the case the disallowance of the bad debt of Rs, 2,68,385 is right in law ?

The Tribunal rejected the application, but pursuant to an order made by the High Court of Madras under Section 66(2) submitted a statement of the case on the following question :

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the debt of Rs. 2,68,385/-was not one incurred in the course of money lending business of the assessee ?

In the opinion of the High Court the debt of Rs. 2,68,385/-due to the appellants was not a bad and doubtful debt in its money lending business not a debt representing loss sustained in the other business. The question referred was, therefore, answered in the affirmative and against the appellants.

6. Section 10(2)(xi) of the Indian Income tax Act, 1922, as in force at the relevant time provided :

(2) Such profits or gains shall be computed after making the following allowances, namely:

(xi) When the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or moneylending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided. . . . . .

Clause (xi) was in two parts. A bad and doubtful debt due to the taxpayer, written off as irrecoverable in the books of account was properly allowable in computing the taxable profits from business, profession or vocation, where accounts were not kept on the cash basis, if the debt was in respect of a loan made in the course of the taxpayer's business as a banker or money-lender, or when the taxpayer was carrying on any other business the debt was in respect of that other business.

7. Before the Tribunal the appellants claimed allowance for the debt written off relying upon both the branches of Section 10(2)(xi) and by the application under Section 66(1) of the Income-tax Act a question covering both the branches of the section was also sought to be raised. But the question on which the Tribunal was called upon to state the case was in form imprecise and in import somewhat vague. A bad and doubtful debt due to an asses see in respect of banking or money-lending business is allowable under Section 10(2)(xi) if it is in respect of loams made in the ordinary course of such business. A bad and doubtful debt in respect of a business other than banking or money-lending is allowable even if it is not in respect of loan: but a debt due in the course of the business of a money-lending is not allowable unless it is in respect of loans made in the ordinary course of his business. We are of the view that the question should have been referred in the form suggested by the appellants in their application under Section 66(1) with appropriate variations. In the interest of justice we direct that the question be reframed as follows:

Whether on the facts and in the circumstances of the case the Tribunal erred in disallowing the debt of Rs. 2,68,385/-written off by the assessee in their books of account as irrecoverable.

8. The two branches of the question as reframed then are: (1) Whether the debt or any part thereof is in respect of loans made in the ordinary course of money-lending business of the appellants; and (2) whether the debt or any part thereof is in respect of the other business of the appellants.

9. We are of the view that before the question may be answered, it is necessary to call for a supplementary statement of the case from the Tribunal. The Tribunal's order is very brief: it gives no reasons in support of the conclusions. The argument based on the first part of Section 10(2)(xi) that the debts were due in respect of the business of the appellants other than money-lending was not considered at all, and the Tribunal disposed of the second part of the case by merely observing that it was an "accommodation" account to enable the Bombay firm to tide over the "financial crisis" threatening it in Samvat Year 2007, and that the transactions in the account were totally unconnected with the normal business of the appellants. An "accommodation" advance is a neutral expression: it may be of the nature of a loan advanced in the ordinary course of business by a money

lender; it may be an advance the money-lending or other business of the asses-see but not in the nature of a loan; or it may be wholly unrelated to the business of the tax-payer.

10. The statement submitted by the Tribunal is also inadequate. It contains only a summary of the business relations between the appellants and the Bombay firm, a statement as to the amounts due at the end of each year at the foot of the account, the interest if any charged and a summary of the orders made by the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal. The statement of the case does not analyse the evidence and throws no light upon the two branches of the argument raised before the Tribunal and which, in our view, arose out of the question on which they were required to submit a statement of the case.

11. Counsel for the Revenue, however, contended that there are three important circumstances which appear from the order of the Appellate Assistant Commissioner and the Income-tax Officer from which it may be inferred that the advances made by the appellants to the Bombay firm were not in respect of loans in the ordinary course of the business of the appellants, nor in respect of their other business. Counsel said that (1) Sobhagchand Amarchand partner of the Bombay firm is the father of Seshmal one of the partners of the appellants and of the minors Ramniklal and Lakshmichand who are admitted to the benefits of partnership; (2) that large amounts of money were advanced shortly before the Bombay firm closed its business; and (3) that there was a consistent practice for paying or receiving interest on the amounts due at the foot of the account, but no interest was charged by the appellants in respect of the dues at the foot of the account at the end of Samyat Years 2007 and 2008. But the Tribunal has not raised any inference from these circumstances and has merely observed that charging of interest cannot make it a money lending account.

12. We, therefore, direct that the Income-tax Appellate Tribunal do submit a supplementary statement of the case on the question refrarred, on both the branches of Section 10(2)(xi) of the Indian Income-tax Act, 1922. The Tribunal will give opportunity to both the parties of being heard, but will restrict themselves to the evidence on the record. The supplementary statement to be submitted within three months from the date the papers reach the Tribunal.

13. [After receipt of the supplementary statement of case from the Tribunal the appeal wus heard by J.C. Shah, K.S. Hegde and A.N. Grover, JJ. The order of the Court was delivered by] J.C. Shah, C.J.

14. By our order dated July 29, 1969 we called for a supplementary statement of case on the question refrained in the light of the two branches of Section 10(2)(xi) of the Indian Income-tax Act, 1922. We have now received a statement of case from the Tribunal. The Tribunal has set out in great detail the E arguments advanced before it by the assessee and by the Revenue but it has not set out the facts found by it from the evidence on the record in the light of the arguments advanced. The statement of case is intended to be a finding on facts and not a catalogue of the arguments advanced at the Bar. Since the Tribunal has not found the facts we are constrained to send back the case again to the Tribunal for submitting to this Court a supplementary statement on facts found by the Tribunal. The Tribunal will submit the statement within three months from the date on which the papers reach the Tribunal.

15. [After receipt of the second supplementary statement of case from the Tribunal the appeal was finally heard by J.C. Shah, C.J.K.S. Hegde and A.N. Grover, JJ. The Judgment of the Court was delivered by] K.S. Hegde, J.

16. The appellant firm (which will hereinafter be referred to as the "assessee") carried on business in drugs, chemicals, mercury, camphor and art silk yarn as also in money-lending, over a number of years. The accounting year with which we are concerned in this appeal is Samvat year 2008 commencing from October 31, 1951 and ending on Oct. 18, 1952. The firm consisted of two partners, Mohanlal Bagmal and Sashmal Sobha Chand. Two minors, Ramniklal Sobhachand and Lakshmichand Sobhachand were admitted to the benefits of the partnership. The assessee had dealings for several years with a firm known as "Bhojaji Sobhachand" (to be hereinafter referred to as the Bombay firm). Sobhachand Amarchand, a partner of the Bombay firm, is the father of Seshmal, Ramaniklal and Lakshmichand and he was having sixteen percent share in the Bombay firm. That firm became insolvent in April 1952. The Bombay firm owed certain amount to the assessee. In the assessment of income-tax of the appellant for the assessment year 1952-53, relevant to the account year Samvat 2008, the assessee claimed a deduction of Rs. 2,68.385 /as bad debt due from the Bombay firm, incurred by that firm in the course of business transactions. The Income tax Officer disallowed that claim folding that "these transactions were mere accommodations which can have no bearing to the regular business carried on by the assessee. In appeal the Appellate Assistant Commissioner agreed with the Income-tax Officer. He held that the debt did not arise in the course of the assessee's business as Chemists and Druggists nor in the course of their money-lending business. On a further appeal taken by the assessee to the Income-tax Appellate Tribunal, the tribunal confirmed the order of the Appellate Assistant Commissioner. The assessee thereafter applied to the tribunal under Section 66(1) of the Indian Income-tax Act, 1922 to submit a statement of the case with the question "whether on the facts and in the circumstances of the case the disallowance of the bad debt of Rs. 2,68,385/-is right in law" to the High Court of Madras for its opinion. The tribunal rejected that application but pursuant to an order of the High Court under Section 66(2), the tribunal submitted a statement of the case on the following question :

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the debt of Rs. 2,68,385 /-was not one incurred in the course of money-lending business of the assessee.

17. The High Court opined that the debt in question was not a bad and doubtful debt in the assessee's money lending business nor a debt representing loss sustained in the other business. The question referred was, therefore, answered in the affirmative and against the assessee. Thereafter the present appeal was brought after obtaining special leave from this Court. At the hearing of the appeal this Court found that the tribunal's order was very brief and that it gave no reasons in support of its conclusions. It also found that the statement submitted by the tribunal was inadequate. this Court took the view that the question framed at the instance of the High Court did not bring out the real question arising for decision. It accordingly reframed the question as follows:

Whether on the facts and in the circumstances of the case the Appellate Tribunal erred in disallowing a sum of Rs. 2,68,385/-written off by the assessee in their books of accounts as

irrecoverable ?

By its order dated July 29, 1969 this Court called upon the Tribunal to submit a supplementary statement of case on the reframed question. The tribunal accordingly submitted a fresh statement of the case on the question referred. But that statement merely catalogued the arguments advanced at the bar. The tribunal did not give any findings on the points arising for decision. Hence by its order dated April 7, 1970 this Court directed the tribunal to submit a further statement. The tribunal has accordingly submitted a further statement.

18. The facts found by the tribunal are found in paragraphs 11 and 12 of the statement they read:

11. We have taken into consideration the available materials and the rival submissions. The only facts in favour of the assessee are that incidental charges are debited to the Bombay firm in respect of some of the remittances and there is a flow of moneys to the Bombay firm up to 10-3-1952 when the last of the remittances was sent to it before the firm collapsed in about; April 1952. On the other hand the narrations in the entries as they stand the failure to adjust interest in the account of the Bombay firm at the stage at which it be came a debtor in Samvat year 2007, the manner in which the partner of the appellant-firm tried to explain the position in March, 1954 and the stand of the firm itself at all earlier stages support the case of the Department.

12. Having considered all the circumstances of the case we are of the opinion that the sums in question were not sent to the Bombay firm as loans made in the ordinary course of the money-lending business of the assessee nor in respect of any other business of the assessee. As this is the finding with regard to the whole of the amount of Rs. 2,68,385/-there is no question of allocating any portion thereof as between the business of money lending or for any other purpose as preferred to para 7 above.

It is true as contended by the learned Counsel for the assessee that the conclusions reached by the tribunal are not supported by proper discussion of the material before it. It is also true that the tribunal after cataloguing the arguments advanced at the bar, has come to certain abrupt conclusions, but all the same it cannot be denied that the findings reached by the tribunal are findings of fact and those findings are supported by the evidence on record. The tribunal has found that the monies sent by the assessee to the Bombay firm were not loans made in the ordinary course of its money-lending business, nor in respect of any other business of the assessee. This finding covers the entire amount sought to be deducted. In view of this finding, which is binding on tills Court, our answer to the question reframed has to be in the negative and in favour of the Department. The appeal fails and is dismissed. No costs.