
(1974) 02 AHC CK 0029

In the Allahabad High Court

Case No : Income-tax Reference No. 435 of 1971

Commissioner of Income Tax

APPELLANT

Vs

Ram Nand Ram Kishan

RESPONDENT

Date of Decision : 14-02-1974

Acts Referred:

Income Tax Act, 1922 — Section 66(1)

Citation : (1975) 101 ITR 98

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : R.R. Misra, for the Appellant; Swami Dayal and Ashok Gupta, for the Respondent

Judgement

R.L. Gulati, J.—This is a reference u/s 66(1) of the Indian Income Tax Act, 1922. The assessee is a firm carrying on business in sugar and money-lending. During the proceedings for the assessment year 1957-58, it claimed to deduct from its income two sums of Rs. 1,02,356 and Rs. 69,537 due from M/s. Jagannath Mahadeo Prasad and M/s. Sri Ram Mahadeo Prasad, the debtors. It was alleged that a large sum of money was due from them for over a number of years. The case of the assessee was that in the relevant previous year, the assessee was able to realise Rs. 1,25,000 from these debtors through arbitration proceedings and the balance left in their accounts was written off as bad debt. The claim of the assessee was rejected by the Income Tax Officer. The Income Tax Officer did not accept that the assessee had realised Rs. 1,25,000 during the previous year through arbitration and he held that the debts were old and had become time barred long before the commencement of the previous year and, therefore, could not be allowed to be deducted. The Appellate Assistant Commissioner also upheld the order of the Income Tax Officer. On appeal, the Income Tax Appellate Tribunal held that the three affidavits filed by the assessee before the Income Tax Officer in support of his assertion that it realised Rs. 1,25,000 through arbitration from the debtors had wrongly been rejected. The Tribunal was of opinion that these affidavits should have been accepted. The Tribunal also

observed that, as the assessee was not confronted with the so-called discrepancies in the two accounts, as existing in the books of accounts of the debtors and the assessee-firm, no reliance could be placed on such circumstance. The Tribunal, therefore, accepted the assessee's claim and allowed the appeal. At the instance of the Commissioner of Income Tax the following question of law has been referred for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the debts of Rs. 1,02,356 and of Rs. 69,537 in the names of M/s. Jagannath Mahadeo Prasad and M/s. Sri Ram Mahadeo Prasad were allowable deductions as bad debt for the assessment year 1957-58 ?"

2. On the finding recorded by the Tribunal that the assessee was able to realise only a sum of Rs. 1,25,000 during the previous year through arbitration, there can be no manner of doubt that the balance amount had become bad debt after the award. The finding that the debts in question had become bad in the relevant previous year is a finding of fact and, based as it is on relevant material, it cannot be questioned.

3. Learned counsel for the department says that before the assessee can get deduction on account of bad debt, he must prove that the debt had become bad in the relevant accounting year. According to him this burden has not been discharged by the assessee and the Tribunal was wrong in allowing the claim of the assessee. No doubt, the debt remained due from the debtors for a long number of years and no steps were taken to recover them, but the fact that the assessee was able to realise a sum of Rs. 1,25,000 during the relevant previous year shows clearly that the debts had become bad in the relevant previous year itself and not earlier.

4. We would accordingly answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to costs which we assess at Rs. 200.