
(1991) 11 RAJ CK 0018
In the Rajasthan High Court
Case No : Income Tax Case No. 67 of 1983

Commissioner of Income Tax

APPELLANT

Vs

R.B. Seth Moolchand

RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:

Income Tax Act, 1961 — Section 256, 36

Citation : (1993) 200 ITR 201

Hon'ble Judges : V.K. Singhal, J; J.R. Chopra, J

Bench : Division Bench

Advocate : D.S. Shishodia, for the Appellant; R. Mehta, for the Respondent

Judgement

V.K. Singhal, J.—In this petition u/s 256(2) of the Income Tax Act, 1961, the following three questions have been raised :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the debts aggregating to Rs. 8,04,199 had become bad during the relevant previous year and the assessee had validly written them off?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no cessation of liability in respect of the credit balances aggregating to Rs. 1,46,285 and that being so, the addition of the aforesaid amount was not sustainable u/s 41(1) of the Income Tax Act, 1961, or, alternatively, even under the head "Income from business or other sources" ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in coming to the conclusion that the assessee's claim for bad debts was tenable by ignoring the fact that the assessee-company was not carrying on any money-lending business in the previous year ?"

2. The brief facts giving rise to the present petition are that, in the assessment year 1973-74, the assessee has written off debts amounting to Rs. 8,04,199

treating them as bad. The amounts to the extent of Rs. 1,46,000 which were lying as credit balances of different parties were credited in the profit and loss account and the same were offered for taxation in the original return but subsequently a revised return was submitted.

3. The Income Tax Officer, in the course of assessment proceedings, asked the assessee to explain the nature of the debts alleged to be bad debts. The assessee was asked to establish the origin of these debts. No information was furnished and the Income Tax Officer came to the conclusion that these debts are of non-trading nature and had become time-barred long back and certain debts pertained to the assessee's sister concern. The list of the names and the addresses of the partners of R.B. Seth Moolchand Nemichand Mining Department and R.B. Seth Moolchand Sohan Chand were also not furnished. No suit was filed nor was any evidence produced with regard to the efforts made by the assessee for the recovery of these debts, with regard to the addition of Rs. 1,46,285. The Income Tax Officer came to the conclusion that the entries in the books were in the nature of advances against supply of goods and as and when sales were effected to these parties, the bills were debited to their accounts and the remaining balance was only on account of excess amount remitted by them. This amount of Rs. 1,46,285 includes a sum of Rs. 71,562 which was directed to be added by the Inspecting Assistant Commissioner u/s 144B(4).

4. An appeal was preferred against this order to the Commissioner of Income Tax (Appeals), Rajasthan-1, Jaipur, which was dismissed and, in the Tribunal, the claim for bad debts of Rs. 8,04,199 was allowed. In respect of Rs. 1,46,285, it was held that the Inspecting Assistant Commissioner has no jurisdiction u/s 144B(4) to give the direction in respect of an item which is not proposed to be included in the draft assessment. The balance of Rs. 74,633 was deleted on the ground that the transfer entry is a unilateral act of the assessee and that there was no cessation of liability. The Tribunal has rejected the application submitted u/s 256(1), on the ground that no question of law arose.

5. We have heard learned counsel for both the parties. So far as question No. 3 is concerned, it appears that this question has been drafted by the petitioner even without reading the judgment of the Income Tax Appellate Tribunal, because the Tribunal has given a finding that the assessee-company was carrying on money-lending business, Whether the finding is in accordance with law or not or based on proper evidence or not is a different matter, but no question can be framed on the basis of supposition of certain facts which have been found by the Tribunal as not correct and, therefore, we are of the opinion that question No. 3 does not arise out of the order of the Tribunal and is based on wrong facts.

6. Regarding question No. 1, the contention of Mr. Shishodia is that it is a question of law since the assessee has not adduced any evidence before the Income Tax Officer in spite of an opportunity being given and the Tribunal has not given any finding in respect of the various points which were considered by the Income Tax Officer and affirmed by the Commissioner of Income Tax

(Appeals), viz., that the debts were outstanding for a long time and they had become time-barred earlier and some of the borrowing concerns were allied concerns of the assessee and that no efforts were made for collection of these debts by the assessee. The Tribunal has proceeded on the basis of the report of a director and he reported that the parties in question have been heavily indebted and there was no possibility of any recovery. This report was alleged to have been received by the assessee-company on February 20, 1973. The said report has not been enclosed as an annexure to the reference application but, from a perusal of the order of the Income Tax Appellate Tribunal, it appears that, even in the said report, it has not been mentioned that the said amounts have not become bad debts in the earlier years.

7. Mr. Mehta has submitted that the question whether a debt is bad or not is one of fact and he has relied on the decision of their Lordships of the Supreme Court in *Bank of Bihar Ltd., Patna Vs. Commissioner of Income Tax, Bihar and Orissa*, in which it has been held by their Lordships that the question whether a debt is bad is one of fact and if there is some evidence to justify the conclusion of the Tribunal, it is not open to the High Court in a reference u/s 66 of the Income-tax Act, 1922, to reappraise the evidence. This judgment does not help the assessee because, in the present case, there is no legal evidence but, on the contrary, the evidence was not produced before the Income Tax Officer even when called for. Besides this, all the reasons given by the Income Tax Officer have not been found incorrect. In *Commissioner of Income Tax Vs. Santosh Rice Mills*, it has been held that, whether the Tribunal was justified in allowing the assessee's claim for deduction as bad debt was a question of law fit to be referred. Similarly, in *Commissioner of Income Tax Vs. Electric Construction and Equipment Co. Ltd. (No. 1)*, it was held that the question whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in allowing bad debts of Rs. 17,398 for which the assessee could not furnish any details was a question of law. The said question was referred (at page 670) :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in permitting deduction of Rs. 17,398 on the basis of the letters dated March 24, 1976, and November 3, 1977, produced for the first time, without due verification of the said letters ?"

8. In *Commissioner of Income Tax Vs. Electric Construction and Equipment Co. Ltd.*, the question whether the Income Tax Appellate Tribunal was correct in law in holding that the bad debts of Rs. 1,25,271 were genuine and written off in the year under consideration was held to be a question of law and the said question was referred as under (at page 183) :

"Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the bad debts of Rs. 1,25,271 could be written off in the year under consideration on the basis of material and details furnished to the Tribunal ?"

9. Looking to the overall position and without expressing any opinion about the correctness or otherwise of the claim of Rs. 8,04,199, we are of the opinion that a question of law does arise, as the validity of such bad debts written off by the assessee in its books of account has been challenged, more particularly when no evidence was produced before the Income Tax Officer and some of the debts also relate to the sister concerns.

10. In respect of question No. 2, we are of the opinion that, since the question of jurisdiction of the Inspecting Assistant Commissioner u/s 144B(4) has not been challenged, no useful purpose will be served by calling for the question to that extent. For the balance amount of (Rs. 1,46,285--Rs. 71,652) = Rs. 74,633, we are of the opinion that a question of law does arise and we reframe it as given below :

"Whether the balance of Rs. 74,633 out of advances received by the assessee-company during the course of its business received in the earlier years and credited in the profit and loss account in the relevant previous year is the income of the assessee-company."

11. In view of the above, we direct the Income Tax Appellate Tribunal to refer the following two questions of law which arise out of the order of the Tribunal :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the debts aggregating to Rs. 8,04,199 had become bad during the relevant previous year and the assessee had validly written them off ?

(2) Whether the balance of Rs. 74,633 out of advances received by the assessee-company during the course of its business received in the earlier years and credited in the profit and loss account in the relevant previous year is the income of the assessee-company?"

12. The reference application is, accordingly, partly allowed. No order as to costs.