

(1945) 11 MAD CK 0032
In the Madras High Court

Commissioner of Income Tax

APPELLANT

Vs

Sri Talupuru Venkatasubbiah Chetty

RESPONDENT

Date of Decision : 23-11-1945

Acts Referred:

Income Tax Act, 1961 — Section 10(2)(xi)

Citation : AIR 1946 Mad 494

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The assessee is the manager of a joint Hindu trading family, which deals in timber, iron and hardware and runs a money-lending business. Before 1933, it carried on a separate money-lending business in partnership with one Chinni Veera Swami Chetti. This business was dissolved in 1933 and its assets were divided between the partners. As part of its share the family of the assessee received certain promissory notes executed by persons to whom the partnership had lent money. At the time of the dissolution these debts were regarded as being good and were entered in the books of the family relating to its money-lending business. From time to time, the promissory notes were renewed and interest was paid to the family by the debtors. This interest was included in the profits of the family and assessed to Income Tax accordingly. In the year of account 1941-42 the assessee wrote off as being irrecoverable three debts, namely, Rs. 3182, Rs. 4382 and Rs. 1291, making in all Rs. 8855. The assessee claimed to be entitled to deduct this amount in calculating his assessable income by reason of the provisions of Section 10(2)(xi), Income Tax Act. The Income Tax authorities refused to recognise the validity of this course, but it was upheld by the Income Tax Appellate Tribunal, Madras Bench, in an order dated 11th May 1944. At the instance of the Commissioner of Income Tax the Tribunal has referred to this Court under the provisions of Section 66(1) the following question:

Whether on the facts and in the circumstances of the case, the sum of Rs. 8855

is allowable as a deduction in the assessment for 1942-43 u/s 10(2)(xi) or any other provisions of the Act?"

2. Section 10(2)(xi) allows a person carrying on a money-lending business to deduct loans made in the ordinary course of that business when they are irrecoverable, provided that they do not exceed the amount actually written off as irrecoverable in the books of the assessee. In this case, all the three debts were written off and it is accepted by the Commissioner of Income Tax that they are in fact irrecoverable. Mr. Rama Rao Sahib, on behalf of the Commissioner, says that the Tribunal erred in allowing the assessee's appeal because these loans were not made in the ordinary course of the family's business but were made in the course of the partnership business. It is true that the money was actually lent by the partnership, but the loans were allotted to the family on the dissolution of the partnership and they became part of the assets of the family's own business. The promissory notes which were actually written off as irrecoverable were not the original promissory notes, but they were promissory notes which had been renewed by the borrowers in favour of the assessee. Inasmuch as the Income Tax authorities have since the dissolution regarded these loans as being part of the family's business and taxed the family on the interest paid in respect of them, it is rather surprising that they should now contend that clause (xi) does not apply. Since 1983 these loans have been regarded as having been made by the assessee in the ordinary course of its business. In fact, in the assessment for 1986-37 the assessee was allowed to deduct as irrecoverable another debt which it had received on the dissolution of the partner, ship.

3. Mr. Rama Rao Sahib, in the course of his argument, referred us to the decision of the Calcutta High Court in *Chimanlal Rameswarlal Vs. Commissioner of Income Tax*, which he regarded as supporting his argument. The facts in that case do not appear to be on all fours with the facts in the present case and we do not regard it as being applicable. We reserve our opinion as to whether it should be followed by this Court until the question arises on exactly similar facts. We answer the question referred by stating that the sum of Rs. 8855 is allowable as a deduction in the assessment for 1942-48 u/s 10(2)(xi). The Commissioner will pay the assessee's costs, Rs. 250.