
(1966) 06 KAR CK 0007

In the Karnataka High Court

Case No : Income-tax Referred Case No. 24 of 1964

Commissioner of Income Tax, Mysore

APPELLANT

Vs

Y.V. Sreenivasa Murthy

RESPONDENT

Date of Decision : 03-06-1966

Acts Referred:

Income Tax Act, 1922 — Section 10 (2), 10 (2) (xi), 66 (1)

Citation : (1967) 63 ITR 306 : (1966) 2 MysLJ 267

Hon'ble Judges : Ahmed, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for G. R. Ethirajulu Naidu, for the Appellant; S. Swaminathan, for the Respondent

Judgement

Somnath Iyer, J.—This is a reference u/s 66(1) of the Indian Income Tax Act, 1922, sought by the Commissioner's of Income Tax, Bangalore, in the following circumstance : The assessee was carrying on a business as distributor and exhibitor of picture. According to the statement of the case, the ordinary mode of carrying on the business was to advance monies to the produces of picture and to obtain from them, in consideration of the monies advanced, rights of distribution in specified areas.

2. There was an agreement on June 13, 1951, between the assessee and a certain Thyagaraja Bhagavathar under which there was an acquisition of the rights of distribution of a picture known as Shyamala in the district of Trichy and Coimbatore. Under that agreement, a sum of Rs. 50,000 was advanced by the assessee to Thyagaraja Bhagavathar. The condition regulating the distribution of the picture was that the assessee should first reimburse himself to the extent of the sum of Rs. 50,000 advanced and become entitled to a commission on a progressive scale in respect or realisations over and above that sum of money. It was also agreed that in the event of the realisations less the commission falling short of a sum of Rs. 50,000 advanced to the producer, the producer should pay back the amount advanced to the assessee.

3. On September 1, 1951, the assessee entered into an agreement for sub-distribution with a concern known as the Rajshri Pictures on conditions similar to those which were recorded in the agreement between the producer and the assessee, although the commission for sub-distribution was payable on a different basis.

4. The picture failed, and so the assessee had to pay back the Rajshri Pictures the amount advanced by them; and similarly, the producer had to return a sum of Rs. 50,000 to the assessee. That not having been done, Rajshri Picture instituted a suit against the assessee for the recovery of Rs. 44,634 and the assessee was defendant No. 1 and the producer was defendant No. 2. There was a consent decree in that suit on September 19, 1957, under which the assessee agreed to pay Rs. 37,800 to Rajshri Picture and Thyagaraja Bhagavathar had to pay a like amount to the assessee.

5. On March, 31, 1957 a sum of Rs. 41,915 was payable by Thyagaraja Bhagavathar to the assessee and in the previous year ending on March 31, 1957, the assessee debited his profit and loss account with that sum of money and credited it to a bad debt reserve account.

6. This sum of Rs. 41,915 was, according to the assessee, trading loss but the Income Tax Officer disallowed it. But the Appellate Assistant Commissioner allowed the deduction of a sum of Rs. 36,300 in respect of the of that matter.

7. The assessee claimed a deduction of another sum of Rs. 2,500 as the expenses incurred in the litigation, and, here, again, it was disallowed by the Income Tax Officer but allowed by the Appellate Assistant Commissioner.

8. From this decision of the Appellate Assistant Commissioner, there was an appeal to the Income Tax Appellate Tribunal by the Income Tax officer which was dismissed. Both the Tribunal and the Appellate Assistant Commissioner were of the view that, while the sum of Rs. 2,500 was an expenditure incurred for the conduct of the litigation and was deductible, a sum of the true incurred for the conduct of the litigation and was deductible, a sum of the Rs. 36,300 allowed by the Appellate Assistant Commissioner, was a trade loss.

9. The question referred to us in this reference read :

"Whether, on the facts and in the circumstances of the case, the two sums of Rs. 36,300 and Rs. 2,500 are allowable deduction in the computation of the assessee's business income as trade lose ?"

10. Mr. Rajasekhara Murthy for the Commissioner did not ask us to say that the assessee was improperly allowed deduction in respect of the sum of Rs. 2,500. We have no doubt in our minds that that deduction was properly allowed since it represented the expenses incurred by the assessee for the litigation in which there was a decree in his favour against Thyagaraja Bhagavathar.

11. But Mr. Murthy did contended that the sum of Rs. 36,300 was improperly

deducted. His first submission which rested on section 10(2)(xi) of the Income Tax Act, 1922, was that, even if this sum of money represented a bad and doubtful debt, it was not a debt due to the assessee in respect of his business. Although the Appellate Tribunal did not in so many words say that the debt which is considered to be a trade loss fell within section 10(2)(xi), we have not doubt in our minds that Mr. Murthy is not on firm ground in contending that the debt was not due to the assessee in respect of his business. The finding of the Tribunal was that the sum of Rs. 50,000 was advanced by the assessee to Thyagaraja Bhagavathar under the agreement under which there was an acquisition of the right of distribution in respect of the film produced by Thyagaraja Bhagavathar.

12. The advance was made in the context of the acquisition of the right for distribution, and the agreement provided for its repayment in a particular way. A debt so advanced for the acquisition of the right of distribution in the course of a business, which the assessee was conducting as a distributor and exhibitor of pictures, is clearly a debt due to him in respect of the business within the meaning of section 10(2)(xi) of the Indian Income Tax Act, 1922.

13. Mr. Swaminathan appearing for the assessee is right in asking us to say that a loss incurred by the assessee in that way is a trade loss, not only because the profit of the business carried on by the assessee can be computed only after deducting from the gross profits the amounts lost in the form of doubtful debts, but also for the reason that the amount lost is a bad and doubtful debt due to the assessee in respect of his business. This submission made by Mr. Swaminathan receives sustenance from the pronouncement of the Supreme Court in *Indore Malwa United Mills Ltd. v. State of M.P.* in the course of which the Supreme Court pointed out that the relevant principle of law had been laid down by it in *Badridas Daga v. Commissioner of Income Tax*; in the following words :

14. "The result is that when a claim is made for a deduction for which there is no specific provision in section 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is not prohibition against it, express or implied, in the Act."

15. Since there can be no doubt that the debt due to the assessee by Thyagaraja Bhagavathar was a debt in respect of the assessee's business and, since that debt has become irrecoverable, there could be no computation of the profits of the assessee's business except the deduction of the amount of that loss from the gross profits. That is indeed also what is enjoined by section 10(2)(xi). That being the position, the Appellate Tribunal was right in concluding that there was a trading loss attributable to the irrecoverable character of the debt which concerned the business of the assessee. What the Supreme Court observed in *Indore Malwa United Mills Ltd. v. State of M. P.* in which a similar question arose for decision reads :

"We, therefore, find no difficulty in holding that the said debt which had become irrecoverable was a trading loss deductible in computing the profits of the appellant-company in the assessment year. It was a loss incidental to the appellant's business and is certainly sanctioned by commercial practice and trading principles."

16. At one stage Mr. Rajasekhara Murthy asked us to say that the debt was nether a bad nor a doubtful debt since the assessee had credited the amount to the bad debts reserve account. This submission, to our minds, cannot stand scrutiny since, as stated by the Appellate Tribunal, the assessee, before crediting the amount in a bad debts reserve account, wrote it off by debiting that amount in his profits and loss account.

17. In our opinion, the question referred to us had to be answered in favour of the assessee. Our answer to the question is that, on the fact and in the circumstances of the case, the two sins of Rs. 36,300 and Rs. 2,500 are allowable deduction in the computation of the assessee's business income as trade losses.

18. The assessee will get this costs in this reference. Advocate's fee Rs. 250.

19. Question answered in favour of the assessee.