
(1981) 03 MAD CK 0024

In the Madras High Court

Case No : Tax Case No. 658 of 1976, (Reference No. 576 of 1976)

E.A.V. Krishnamurthy and Son

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-03-1981

Acts Referred:

Income Tax Act, 1961 — Section 36, 36(1), 36(2), 41(4)

Citation : (1985) 152 ITR 640

Hon'ble Judges : V. Ramaswami-II, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Srinivasan and R. Janakiraman, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Balasubrahmanyam, J.—This is a case stated by the Income Tax Appellate Tribunal under s. 256(1) of the I.T. Act, 1961. The first question,

which falls for our decision in this case is :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee's claim for deduction of bad debts

aggregating to Rs. 5,276 was not admissible as the requirements of section 36(2)(i)(a) of the Income Tax Act, 1961, were not satisfied ?

2. The assessee, who claimed the allowance of bad debts in this case, is a registered firm called "E.A.V. Krishnamurthy and Son, Madurai

carrying on business in cloth. The firm consisted of two equal partners. E.A.V. Krishnamurthy and E.K.Kasiviswanathan. The business of this

partnership firm was originally carried on by a Mitakshara joint family in which these individuals were members. In April, 1972, this business was

subjected to a partial partition between these two individuals, who immediately thereafter constituted themselves into the present partnership firm

and continued the business. Amongst the assets of the business, as might be expected, were trade debts and other outstandings. A few of them, however, became bad and doubtful debts after the business became that of the partnership. With some of the debtors, the partnership firm entered into a settlement. Under this scheme, the firm was able to realise all but a portion from the debtors. The balance of the book debts amounting to Rs. 5,276 however, was written off in the Firm's books as bad and irrecoverable. The settlement between the debtors and the write-off in the accounts happened in the accounting year ended on April 12, 1973. In the relevant assessment of the firm for 1973-74, the question arose whether the sum of Rs. 5,276 written off the accounts was allowable as bad debts in the computation of the firm's business income. The ITO held that as the debts in question were incurred when the joint family had been carrying on the business and as that business became partitioned and the business was subsequently continued by the assessee-firm, the loss in the hands of the assessee was a capital loss. Much the same view was taken by the AAC in appeal. But he thought that to the extent the writ-off consisted of interest and debt charges which had accrued after the partnership took over the business, the assessee-firm was entitled to an allowance, which he computed in the sum of Rs. 717. On further appeal, the Tribunal confirmed the AAC's order.

3. Before the Tribunal, the question of allowance of bad debts provoked a wide range of discussion. One of the points considered by the Tribunal was whether the claim for allowance could be sustained under s. 36(1)(vii) of the I.T. Act, 1961. the tribunal pointed out that the allowance under this provision was subject to the fulfillment of the conditions set out in s. 36(2) of the Act. clause (i)(a) of s. 36(2) laid down the condition that the debt in question, in order to be allowed as a bad debt of a previous year, must have been taken into account in the income computation of the joint family and not in that of the assessee-firm, the Tribunal held that the statutory condition was not fulfilled. The Tribunal expressed the view that clause (i)(a) of s. 36(2) imported a condition precedent for allowance of bad debts which was not laid down as a requirement in the corresponding provisions of s. 10(2)(xi) of the Indian I.T. Act, 1922. In this view, the Tribunal declined to follow the earlier court decisions bearing on the

interpretation and the application of s. 10(2)(xi) of the 1922 Act.

4. In this reference, this view of the Tribunal is canvassed as incorrect. Mr. Janakiraman, learned counsel for the assessee-firm, submitted that the

Tribunal ought to have followed the authority of the decisions bearing on s. 10(2)(xi) of the 1922 Act for the present case as well. the learned

counsel said that it was a well-settled principle of Income Tax law that a trade debt which had arisen in a business before it was taken over by an

assessee is eligible to allowance in the assessee's hands whenever it becomes bad. The learned counsel submitted that s. 36(2)(i)(b) of the present

I.T. Act does not prohibit such an allowance either expressly or by necessary implication. he cited, in support, the decisions of the Andhra

Pradesh, Allahabad and Punjab and Haryana High Courts as well as a decision of this court—all of which were rulings bearing on s. 36(2)(i)(b) of

the I.T. Act, 1961.

5. Mr. Jayaraman, learned counsel for the Department, however, maintained that what s. 36(2)(i)(b) of the present Act has laid down was a clear

departure from the pre-existing position of the law relating to allowance of bad debts. He distinguished this court's decision in *Addl. CIT v. S.*

RM.PL, Subramania chettiar [1979] 119 ITR 925 as bearing on a different provision, namely, s. 36(2)(iii) of the Act. He relied, however, on a

later Bench decision of this court in *Commissioner of Income Tax Vs. P.K. Kaimal*, although it only had a bearing on s. 41(4) of the I.T. Act.

According to the learned counsel, this later decision enunciated a principle which was appropriate to the understanding of s. 36(2)(i)(b) as well.

6. Before addressing ourselves to a consideration of the submissions on either side and the case law bearing on the subject, it would, we think,

assist the discussion to find out the reasonable behind the allowance of bad debts as an item of admissible deduction in the computation of taxable

income from business. any assessee carrying on business is liable to pay Income Tax on his annual profits and gains derived from his business. the

annual profits, broadly speaking, are ascertainable by setting against receipts from the business, the expenses which had gone into that business in

order to earn those receipts and also other debit items which are to be charged against profits. Where the impact and result of the business

transactions are reckoned by the assessee, according to the mercantile system of

accounting, as opposed to the cash system, the assessee would quite naturally account for, or take into account, sums which are receivable from parties with whom he trades, by giving credit to such transactions and by debiting the parties. Where, for instance, the assessee sells his trading stock, he will forthwith credit the sales account for the price, although actual payment might be postponed. The unpaid purchase price thus becomes a book debt, because the amount would stand to the debit of the customer's at the same time, the amount representing the sale price would already go into the assessee's trading and profit and loss account, because of the treatment accorded to it under the mercantile accounting system. If, in those circumstances, the customer subsequently pays the price, well and good; that would only make a difference in the assessee's cash position, and not in the assessee's profit position which, ex hypothesi, has already taken note of the amount covered by the sale of the trading stock. But what if the customer fails, and the amount not only is not paid, but become doubtful or impossible of recovery? In that situation, the trade debt which figures as an outstanding in the assessee's books, would become bad and irrecoverable. It is, therefore, quite proper and even necessary that if the accounts are to reflect the net financial effect to the assessee of the whole course of transactions of this kind, then the credit earlier given to the sales account must be properly offset by a credit reflecting the subsequent impracticability or impossibility of realising that money. This is done by writing off the debt as bad and irrecoverable - the debt which, in its genesis had swollen the assessee's profits in an earlier year and which had continued to remain in the books thereafter as an outstanding. The writ-off of the debt is done by crediting the doubter's account in which the amount already stands as a debt and as an amount still owing by him. By this entry, the assessee washes of his hands, as it were, of this outstanding. Correspondingly, the profit and loss account is debited with the amount of the bad debt. This is because the amount already had been taken into account when it was goods, that is to say, in the sales account and, necessarily, in the trading and profit and loss account.

7. It is a fundamental principle of Income Tax accounting that taxable profits in business will have to be ascertained on the basis of ordinary acceptable principles of commercial accounting. Where, therefore, the assessee

makes up his accounts under the mercantile system, his business

profits for Income Tax purposes would have to be computed in accordance with those principles. there is a distinct provision in the Act to that

effect. The only cautionary rider is that the following of the commercial method of accounting adopted by the assessee must truly reflect the real

profits of the given business he happens to carry on.

8. In this background, therefore, there is really no need as at all for any specific profession in the Income Tax statute for allowance of bad debts.

For, as we have shown earlier, if sales under the mercantile system are given credit to, then and there, without waiting for their realisation, then it

stands to reason that where the sale price is not subsequently realized, and the purchaser fails for some reason for other and is not in a position to

pay the amount, the amount has necessarily to be written off as bad and irrecoverable in such a way that it will be a proper debit item in the

ascertainment of profits. however, it has been a characteristic of Income Tax law in this country that right from the very start, the Legislature had

always enacted a specific provision under which bad debts may be claimed by the assessee and allowed by the Department, in the computation of

assessable business profits. In England, there is no such provision, but nevertheless a like allowance is given to taxpayers for deduction of bad

debts, in the computation of annual profits of trade, on the principle which has been succinctly set out by Rowlatt J., in the following passage in

Courts v. J. & G. Oldfield Limited [1925] 9 TC 319:

When the rule speaks of a bad debt, it means a debt which is a debt that would have come into the balance-sheet as a trading debt in the trade

that is in question and that it is bad. It does not really mean any bad debt which, when it was a good debt, would not have come in to swell the

profits.

9. In the Indian I.T. Act, 1922, s. 10 has laid down the manner in which the profits and gains of a business, as a separate head of income, have to

be computed. sub-s. (2) of s. 10 provided for the computation of the various allowances which have to be made in arriving at the taxable profits

from the business. One of such allowances specified in s. 10(2) of the Act related to bad debts. The relevant clause, clause (xi), was in the

following terms :

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,..... 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.

10. It might be noticed that the language of this clause specifically refers to bad and doubtful debts as being due to the assessee in respect of his

business, profession or vocation where his accounts are not kept on the cash basis. notwithstanding the reference to the assessee's accounts and

the debt being but to the assessee in respect of his business, profession or vocation, the allowance claimed under this provision has been held by

court courts to be available even in cases where a debt had been incurred in a business carried on by some one and subsequently the business

changes hands either by voluntary transfer or by the operation of law and subsequently the debt becomes bad and allowance is claimed by the

transferee who subsequently happens to carry on the business. In a decision by a Bench of this court in *Mettur Sandal Wood Oil Co. Vs.*

Commissioner of Income Tax, Madras, , this point was discussed in some detail. In that case, the business was originally carried on by a HUF.

There was a partition in the family. the family business was allotted to some of the members. They took the business as an integrated whole, and

subsequently continued the business conjointly as a partnership firm. It was held that, in the circumstances of that case, there was no

discontinuance of the business, but only a succession to the business from the joint family to a partnership firm. *Jagadisan J.*, speaking for the

Bench, observed that there was merely a change of ownership from a family to the firm by the operation of law due to partition, but the business

was the same before and after partition. In those circumstances, the question was whether the partnership firm which carried on the same business

subsequent to the family partition was entitled to claim, under s. 10(2)(xi) of the Indian I.T. Act, 1922, an allowance in respect of debts which had

come into being when the business was run by the joint family and which had become bad after the business had been taken over by the parties

concerned. the learned judges, after referring to earlier cases on the subject, held that it was well-settled that the assessee-firm was entitled to

claim allowance under s. 10(2)(xi), and the firm was entitled to write off bad debts found in the books of account of the firm which it had taken

over from the quondam joint family. this decision was cited before the Tribunal in the present case, but it was not followed, since the Tribunal took

the view that the provisions relating to write-off and allowance of bad debts enacted in the present I.T. Act, 1961, were not the same as those

which were enacted in s. 10(2) (xi) of the 1922 Act. It would, there-fore, become necessary to consider whether this attempt at distinguishing

between the two statutory provisions is justified on the terms of those provisions. We have already reproduced the text of s. 10(2) (xi) of the 1922

Act. The rules relating to allowance of bad debts in the present Act are contained in more than one prvision in the Act. Section 36(1)(vii) provides

as follows :

(1) The deduction provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income

referred to in section 28 -

(vii) subject to the provisions of sub-section (2), the amount of any debt or part thereof, which is established to have become a bad debt in the

previous year.

11. Section 36(2) lays down many conditions for making a deduction for bad debt. The following extracts from that provision are relevant for the

purpose of the present discussion :

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply :

(i) no such deduction shall be allowed unless such debt or part thereof -

(a) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money

lent in the ordinary course of the business of basing or money-leading which is carried on by the assessee, and

(b) has been written off as irrecoverable in the accounts of the assessee for that previous year.

12. The submission of Mr. Janakiraman for the assessee before us was that the language of s. 36(2)(i)(a) does not import any restriction or

condition such as might and in the way of the assessee-firm in this case claiming the bad debt merely on the score that the debt had been kept

intact in the business after the firm began to carry it on as its own. The learned counsel submitted that while a stipulation of the kind mentioned in s.

36(2)(i)(a) was not expressly included in the provisions of s. 10(2)(xi) of the 1922 Act, the law even under that provision was much the same.

13. Pausing here for a while, we must accept the submission of the learned counsel that even under s. 10(2)(xi) of the Act, there was an implied

condition that a debt, in order to be allowed as a bad debt, must first have been a good debt and, as a good debt, it must have gone into swell the

profits of the assessee in some earlier previous year. This was decided by the Supreme Court in decision which arose under s. 10(2)(xi) of the Act

in *A. Vs. THOMAS AND CO. LTD. v. COMMISSIONER OF Income Tax.*, . Hidayatuallah J., as he then was, speaking for the Supreme

Court, stated the position thus (p. 75) :

Now, a question under s. 10(2)(xi) can only arise if there is a bad or doubtful debt. Before a debt can become bad or doubtful, it must first be a

debt. what is meant by debt in this connection was laid down by Rowlatt J. in *courts v. J. & g. Oldfield Ltd.* [1925] 9 TC 319 .

14. There then followed a quotation from the judgment of Rowlatt J. which we have reproduced in the earlier part of this judgment. it is, therefore,

clear that so far as s. 36(2)(i)(a) is concerned, it cannot be said that it has introduced a requirement for the allowance of bad debt for the first time

in our scheme of Income Tax. All we can say is that what was implicit in the provision of s. 10(2)(xi) has been expressly enacted by Parliament

when it drew up this clause.

15. The learned standing counsel for the Department submitted that the reference to the ""assessee"" in s. 36(2)(i)(a) must be literally understood as

referring only to the assessee who claims a debt to be bad and in whose accounts for some earlier year the very same debt had figured as a good

debt and had swelled the assessee's profits for that year. We cannot accept this submission in view of our comparative study of the two

provisions, namely, s. 10(2)(xi) in the old Act and s. 36(2)(i)(a) in the present Act, on the basis of the decision of the Supreme court in *A. Vs.*

THOMAS AND CO. LTD. v. COMMISSIONER OF Income Tax., . If so much is granted, namely, that a reference to the expression

assessee"" does not require as a statutory condition, the identity of the same

assessee both at the time when the debt comes into being and at the time when the debt becomes bad and claimed as bad, it would follow as a concomitant, that the claim can and must be considered, other things being equal, in the hand of the person who happens to have the debt and in the particular year in which the allowance is claimed as a bad debt. The same result flows if we consider the very nature of the debt as trading debt and the way in which that debt is represented in the account books of the assessee.

16. The discussion of this subject in some of the reported cases has gone on the basis that a predecessor's debt when it becomes bad in the hands of the successor in the same business is liable to be allowed as a deduction. It is often stated in the course of such discussion that the allowance of bad debt must be related to the business, and the business itself must be regarded, for this limited purpose, as a unit of assessment. In our opinion, the discussion along these lines is apt to render a simple theme, less simple than it deserves to be. We have earlier stated that it is one of the basic principles of commercial accounting which itself reflects the basis of commercial activity, that a trading debt as such must not only swell the profits at the time when it enters into reckoning, but must, by the same token, be regarded as an item of revenue loss or revenue outgoing at the time when the debt becomes bad and irrecoverable. This fundamental principle of commerce and of accountancy is the very basis of the allowance of bad debts. In this context, therefore, it is quite unnecessary to enter into a discussion as to whether a bad debt is to be considered in the context of business, as a unit, or in the context of the assessment of a taxpayer, without regard to the change in identity. Nevertheless, we may observe that theoretical issues of the kind which arise in the present case would arise in the context of succession to business, whether the succession be the result of a transfer between the owner and the transferee, or whether the transfer of the business comes into being by reason of succession by operation of law such as partition in a joint family. In all these cases, however, what is to be found is whether the business continues right through both when the debt comes into the accounts and also when the debt becomes bad and the occasion arises for claiming the bad debt as an allowance. If the continuity of the business is broken, other considerations may

prevail. But, if the business is continued right through, without any break, the change merely occurring in the persons carrying on the business, then the identity of the business as well as the debt to be incorporated in the accounting of the business would not get lost, and the provisions of s. 36(2)(i)(a) will have to be regarded as fully complied with, in the same way as s. 10(2)(xi) of the old Act has been regarded as being applicable by the decision of courts.

17. As we had already indicated, the decision which we have referred to briefly in the foregoing paragraphs flow a uniform trend. The matter has been discussed threadbare in a decision of a Division bench of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. T.

Veerabhadra Rao, K. Koteswara Rao and Co., . It is, however, unnecessary for us to enter into the details of that decision, for the same view has

been expressed much more briefly and succinctly in a decision of the Allahabad High Court in T.N. Shah (P.) Ltd. Vs. Additional Commissioner of

Income Tax, . We think it necessary to quote the following two passages as representing the correct legal position under s. 36(2)(i)(a) of the Act

(p. 356, 357) :

If in a given case, the income of a business is computed by taking into account certain debt, it does not appear reasonable that, in the absence of

any statutory prohibition, allowance on account of the debt having become bad should be denied only because the assessee's identity has changed,

though the identity of the business continues.

In s. 36(2), there is no indication that the word "assessee" has been used with any different connotation or meaning. These is nothing to indicate

that the "assessee" refers to the original creditors and does not include a transferee or an assignee of the debt..... The emphasis is not on the

assessee being the original creditor, but the taking into account of the debt in computing the income of the same business.

(We have re-arranged the passages to bring the correct position of law laid down by the learned judges omitting one sentence as unnecessary).

18. There is a decision of this court which has taken the same view. It is reported as Additional Commissioner of Income Tax Vs. S. Rm. Pl.

Subramania Chettiar, . In this decision, a Bench of our court were concerned with the application of the provisions of s. 36(2)(iii) of the Act.

however, in the course of the discussion of that point, the learned judges had occasion to go into the construction of the entire provision. The

learned judges, after referring to earlier decisions of courts bearing on s. 10(2) (xi) of the 1922 Act and also the subsequent decision of the Andhra

Pradesh high Court in Commissioner of Income Tax Vs. T. Veerabhadra Rao, K. Koteswara Rao and Co., bearing on the provisions of s. 36(2)

(i)(a) of the present Act, observed as follows (p. 930) :

Though the decision referred to above have been rendered with reference to the corresponding provisions in the 1922 Act, the well-established

principle laid down therein applies in the interpretation of s. 36(2), as the position in the 1961 Act is the same as in the 1922 Act. We are,

therefore, of the view that the successor can write off a bad debt relating to the business of the predecessor which business is taken over by the

successor.....

19. In order to make the citation of cases complete, we may also refer to a decision of the Punjab and Haryana High Court in Commissioner of

Income Tax Vs. Jagat Ram Om Parkash, , where the same view is expressed about s. 36(2)(i)(a) of the Act although without much discussion.

20. Mr. Jayaraman, learned counsel for the Department, submitted that the decision of this court in Additional Commissioner of Income Tax Vs. S.

Rm. Pl. Subramania Chettiar, must be read in a restricted way as an authority only for a case arising under s. 36(2)(ii) of the Act. He further

submitted that in the light of a subsequent judgment of a Division Bench of this court, s. 36(2)(i)(a) cannot be given the meaning which had been

given to it by the decisions of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. T. Veerabhadra Rao, K. Koteswara Rao and

Co., , of the Allahabad High Court in T.N. Shah (P.) Ltd. Vs. Additional Commissioner of Income Tax, and of the Punjab and Haryana High

Court in Commissioner of Income Tax Vs. Jagat Ram Om Parkash, . The later Bench decision which the learned counsel cited was in

Commissioner of Income Tax Vs. P.K. Kaimal, . This case was not really concerned with a question of allowance of bad debt either in the same

assessee's hands or in the hands of a successor to a business. what happened in that case was that a debt, which had already been written off as

bad and for which an allowance was actually granted in a prior year's

assessment, subsequently happened to have been recovered from the debtor. the facts of the case were that when the debt was allowed as a bad debt, the business was being carried on by a particular firm. subsequently, that firm got dissolved and a fresh firm was constituted with a new partner joining the old partners, the resulting partnership virtually being a brand new firm. After the new firm took over, it was in a position to collect the debt which was originally given up as bad and for which an allowance had already been granted in the predecessor-firm's assessment. The ITO applied to these facts the provisions of s. 41(4) of the Act for the purpose of bringing to charge the ""bad"" debt so realised by the successor-firm. The question was whether the officer was entitled to do so.

This court considered s. 41(4) as, in itself, being a charging provision and proceeded to hold that for a charge to be in force under this provision, the Department must be in a position to clearly make out the basic facts and circumstances. From this point of view, the learned judges applied a strict interpretation of the provisions of s. 41(4) of the Act. Those provisions are in the following terms :

Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (vii) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to Income Tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

21. The decision of this court was that the charge under s. 41(4) can only be on the identical assessee in whose earlier assessment an allowance had been made with reference to the same debt as a bad debt. It was urged before the court, on behalf of the Department, that s. 41(4) did not contain any reference to the expression ""assessee"", and, hence, the charge can be laid on whomsoever was in a position to realise a bad debt, irrespective of whether the allowance for the bad debt had been made in the same assessee's case or on a different assessee's case. this contention was repelled. The learned judges observed (p. 759) :

The absence of the word "assessee" in s. 41(4) cannot, therefore, be invested with any significance so as to change the concept of liability..... It

is not also proper to attribute to Parliament, in the absence of clear words to that effect, an intention to tax a person who had not reaped the

benefit of the allowance. The intention is to take away the benefit of an allowance already granted. If one did not get that benefit, he cannot be

required to pay the tax. Realisation of a debt is not income. The provision exacts a fiction and would have to be construed strictly on its language.

this is also, in a way, a charging provision and the charge must be clearly made out. It is not made out on the successor.

It is thus the identity of the assessee, who enjoyed the benefit of the allowance, that is to be established in invoking this provision.

22. It would be seen from the above passage that the whole basis of the decision of this court turned on the nature of the liability which Parliament

intended to foist on a taxpayer by reason of the recovery of debt which had been allowed as a bad debt in a prior year. The Bench held that the

provision for charging the realised debt as an income receipt was understandable only because the very same debt had been allowed as a

deduction on the score that it was a bad debt, and not on any other ground. It is this peculiar characteristic of the basis of the charge which led this

court to hold that there must be an identity of the assessee for the purpose of bringing to charge this item of deemed income.

23. This decision cannot be pressed into service for contorting the provisions of s. 36(2)(i)(a) of the Act. It is true that s. 41(4) has a necessary

connection with the allowance made under s. 36(1)(vii) of the Act. But s. 41(4) does not give room for any enquiry into the question whether, in

the first place, even the allowance of the bad debt had not been properly made in the earlier assessment. The only consideration for the application

of s. 41(4) is whether the debt has been allowed in an earlier assessment in the hands of the assessee and whether in the relevant previous year it

had been recovered by him. If these two conditions are satisfied, then the charge would attach.

24. In the manner in which we understand the provisions of ss. 36(1)(vii) and 36(2)(i)(a), the bad debt may have to be allowed in cases, whether

there is a continuity of the business in which the debt had originally occurred, irrespective of whether there has since been a change in the persons

carrying on the business. It might be that this view of s. 36(1)(vii) might call for a reconsideration on the basis of the decision in Commissioner of

Income Tax Vs. P.K. Kaimal, . We hold, however, that the basic provision in s. 41(4) being what it is, and the decision of this court in

Commissioner of Income Tax Vs. P.K. Kaimal, having nothing to do with that provision, nothing that has been decided in that case in any way

derogates from the decision of this court in Additional Commissioner of Income Tax Vs. S. Rm. Pl. Subramania Chettiar, and the line of other

cases decided by other High Courts. For it is a well known principle that the provisions of the Income Tax statute relating to grant of allowances

and deductions tend to revolve round their own orbit, even though they may have some connection with corresponding sections in the same statute

providing for counter-balancing provisions for assessment of categories of deemed income. We ought not to be entering into a discussion as to

what should be the proper interpretation of s. 36(2)(i)(a) of the Act by looking into s. 41(4), any more than we should be engaged in an

interpretation of s. 41(4) while considering the construction and application of the provisions of s. 36(2)(i)(a) of the Act. the two provisions of ss.

41(4) and 36(2)(i)(a) are differently orientated from each other. We, therefore, return our answer to the question which we have set out at the

beginning of the judgment in the negative and against the Revenue.

25. Another question has been propounded and sent for our consideration by the Tribunal and that is in the following terms :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the claim for deduction of Rs. 5,276 was not

admissible as a loss incidental to the business ?

26. This question of law also does arise out of the order of the Tribunal. For, part from holding that the assessee was not entitled to claim an

allowance on the basis of the write-off of the bad debt under s. 36(2)(i)(a) of the Act, the Tribunal also considered an alternative contention urged

by the assessee before the Tribunal which was to the effect that even if an allowance cannot be granted under s. 36(1)(vii) of the Act, still the

assessee would be entitled to claim the amount written off as a loss incidental to a trade. In the view we have held in the foregoing part of the

discussion that the assessee is entitled to an allowance of made debt under s.

36(1)(vii) of the Act and in view of the further determination that s.

36(2)(i)(a) does not stand in the way of that allowance being granted to the assessee itself, the further question whether the amount should be

allowed as a revenue loss does not arise. We, therefore, desist from answering this question. However, for the reasons, we have earlier set out,

this reference is answered in favour of the assessee. This assessee will be entitled to its costs. Counsel's fee Rs. 500.