

(1978) 07 AHC CK 0048

In the Allahabad High Court

Case No : Income-tax Reference No. 139 of 1975

T.N. Shah (P.) Ltd.

APPELLANT

Vs

Additional Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-07-1978

Acts Referred:

Income Tax Act, 1922 — Section 10(2)
Income Tax Act, 1961 — Section 28, 36, 36(2)

Citation : (1979) 8 CTR 207 : (1979) 120 ITR 354

Hon'ble Judges : Satish Chandra, C.J;K.C. Agrawal, J

Bench : Division Bench

Advocate : K.B. Bhatnagar, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, C.J.—M/s. T. N. Shah, a partnership firm, consisting of thirteen partners carried on the business of exporting coal to Pakistan. On 3rd of November, 1966, the thirteen partners of this firm incorporated themselves as a private limited company known as Messrs. T. N. Shah (Private) Ltd., Agra. By an agreement dated 14th November, 1966, the private limited company took over the business of the erstwhile partnership firm as a going concern with all assets and liabilities. The thirteen erstwhile partners became shareholders of this newly floated private limited company.

2. For the assessment years 1968-69, 1969-70 and 1970-71, the company claimed deduction of Rs. 2,15,741, Rs. 6,539 and Rs. 1,02,058 on account of bad debts. There is no dispute that the transactions in which these amounts became bad debt related to export of coal to Pakistan and they were all taken into account in computing the income of the partnership firm in previous years.

3. The ITO disallowed the claims in toto. This disallowance was confirmed by the AAC as well as by the Tribunal.

4. At the instance of the assessee, the Tribunal has referred the following

questions of law for our opinion :

" (1) Whether, on a true interpretation of Section 36(2)(i) of the Income Tax Act, 1961, and on the facts and in the circumstances of the case, the Tribunal was right in disallowing the assessee's claims of bad debts amounting to Rs. 2,15,741. Rs. 6,539 and Rs. 1,02,058 plus Rs. 38,154 for the assessment years 1968-69, 1969-70 and 1970-71, respectively ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the assessee's alternative claims of loss u/s 28(1) of the Income Tax Act, 1961, for the said assessment years ? "

5. The Tribunal emphasised that the Act of 1961 has made a complete departure from that of 1922. Section 10(2)(xi) of the 1922 Act was no more relevant, because a condition was expressly engrafted in Section 36(2)(i) of the 1961 Act, namely, that no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of that previous year. It held that no doubt it was admitted that these amounts had been taken into account while computing the income of M/s. T. N. Shah, the partnership firm, in an earlier previous year, but then that was an assessee distinct from the present private limited company. The firm was, no doubt, the predecessor in business of the present assessee-company. Section 36(2)(i), however, allows only the original creditor to claim relief on account of bad debt. A successor creditor is not entitled to do so.

6. The assessee's alternative claim u/s 28 was repelled on the ground that it did not arise out of the business of the assessee-company but out of the business of the predecessor partnership firm.

7. Section 36(2)(i) relates to deduction of bad debts. In this it corresponds to Section 10(2)(xi) of the 1922 Act. The Act of 1922 also contemplated allowance of such amount as bad debt as the ITO may estimate to be irrecoverable and which had already been written off in the assessee's account in respect of any part of the business, profession or vocation. Construing this provision it was held by the Supreme Court in (I) Commissioner of Income Tax and Excess Profits Tax, Madras Vs. Sri R.S.A. Sankara Ayyar, and COMMISSIONER OF Income Tax, BIHAR and ORISSA Vs. PANDIT LAKSHMI KANT JHA AND OTHERS., and by several High Courts in (2) COMMISSIONER OF Income Tax, MADRAS Vs. SRI TALUPURU VENKATASUBBIAH CHETTY., , Mettur Sandal Wood Oil Co. Vs. Commissioner of Income Tax, Madras, , C.J. Sheth Vs. Commissioner of Income Tax, Madras, , COMMISSIONER OF Income Tax MADRAS Vs. T. M. M. DHARMARAJA NADAR AND OTHERS., , (1941) 9 ITR 202 , Commissioner of Income Tax, Bombay City-II Vs. Bombay Hing Supply Co., and Expanded Metal Depot Private Ltd. Vs. Commissioner of Income Tax, Bombay City - III, that a successor-assessee carrying on the same business was entitled to an allowance of bad debts of that business. In other words, the word " assessee " occurring in Section 10(2)(xi) of the old Act was construed to include a successor-assessee.

8. In Section 36(2) there is no indication that the word " assessee " has been used with any different connotation or meaning. There 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 condition which has expressly been incorporated in Section 36, which did not find place in Section 10(2)(xi) of the Act of 1922, is that the amount of the debt or part thereof should have been taken into account in computing the income of the assessee in a previous year. 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.

9. 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.

10. Section 28, read with Section 36, provides for computation of the income of, inter alia, business. In order to recover tax the income is assessed in the hands of an assessable entity. But the burden of Section 28 as well as Section 36 is to compute the assessable business income. Section 28 expressly applies to a business being carried on in the previous year.

11. We find support for this view in a decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. T. Veerabhadra Rao, K. Koteswara Rao and Co., . It was emphasised by their Lordships that there was nothing in the provisions of the Act to indicate that the deductions u/s 36 were allowable by way of personal relief. The relief of deduction was allowable because it relates to business transactions and has no connection with the personal qualification of the assessee.

12. In our view, the debts in question were allowable u/s 36(2)(i) of the Act. There is no dispute that these debts had been written off as irrecoverable in the accounts of the assessee-company for the previous years in question and so Clause (b) of Section 36(2)(i) was satisfied.

13. In the view we have taken it is not necessary to pronounce any opinion on the question whether these claims were allowable u/s 28.

14. We, therefore, answer the first question referred to us in the negative, in favour of the assessee and against the department. We return the second question unanswered.

15. The assessee will be entitled to costs, which are assessed at Rs. 200.