

Binodiram Balchand and Co. Vs. Cit

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Court : Madhya Pradesh

Decided On : Apr-24-2000

Reported in : [2001]118TAXMAN544(MP)

Appeal No. : IT Reference Nos. 5. and 6 of 1997 24 April 2000

Appellant : Binodiram Balchand and Co.

Respondent : Cit

Advocate for Pet/Ap. : R.L. Jain, *for the Revenue*

Judgement :

ORDER

Chitre, J.

We are requested to record our opinion on a question which has been referred by the Tribunal, Indore Bench, which can be mentioned hereunder :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to deduction of bad debt of Rs. 1,27,856 ?'

The need of referring this question to us for answer by the Tribunal, Indore Bench, arose because such question arose out of IT Appeal No. 759 (Indore) of 1985.

2. The assessee happened to be a registered firm carrying on the business under the style 'Binodiram Balchand & Co., Indore'. It carried business of money-lending. It was having another sister concern under style, 'Vinod Steel Ltd'. The partners of the assessee-firm were the directors and shareholders in the said company. The assessee had advanced certain loans and had debited interest to their accounts. These amounts of interest had been shown as income and taxed. It appears that the said sister company started running into financial difficulties and, therefore, it was unable to pay the creditors including Union Bank of India, which had filed a suit for recovery of a sum of Rs. 39 lakhs from Vinod Steel Ltd. which was the amount irrecoverable, and pertaining to year of Diwali, 1973. So far as present matter is concerned, the assessee had advanced a sum of Rs. 71,007. The interest on this amount was credited and assessed for the year ending Diwali, 1974. The assessee had made further advance of Rs. 65,836. However, pertaining to the year in question, the assessee did not charge any interest. For the year of Diwali, 1975, a further amount of Rs. 68,024 was also advanced and no interest was debited. During this accounting year, the assessee came with a stand that the debtor-company was in deep financial difficulties and they were unable to repay any amount at all. So the assessee-firm wrote off the entire amount of Rs. 1,98,863 as 'bad debt'. The assessing officer had allowed as per directions of the Inspecting Assistant Commissioner the advance paid in context with Diwali, 1973 as 'Bad Debt', which amounted to Rs. 71,007, but, remaining amount was disallowed by the assessing officer. The Inspecting Assistant Commissioner was satisfied that the advance of Rs. 71,007 advanced up to Diwali, 1973 had been irrecoverable and had issued directions to the Income Tax Officer that this amount of Rs. 71,007 could be allowed as 'bad debt'. As far as the advances made in next two years are concerned, the Inspecting Assistant Commissioner gave a finding that these were not the advances in the course of business of money-lending and, therefore, could not be claimed as 'bad debt'. Dissatisfied with the order of the assessing officer, the assessee carried the matter before the Commissioner (Appeals) but the Commissioner (Appeals) upheld the order of the assessing officer.

3. Aggrieved by the order of Commissioner (Appeals), the assessee carried the matter before the Tribunal. After giving a thoughtful consideration to the

submissions of the parties, the Tribunal upheld the findings of Commissioner (Appeals) after relying on its order passed in IT Appeal No. 653/I/84 dated 3-4-1989.

4. An application was moved with a prayer to the Tribunal to make a reference in respect of the point involved to the High Court, but, the same was rejected. Therefore, the assessee-firm moved a petition before the High Court repeating the said prayer which was allowed by the High Court and the Tribunal was directed to make a reference, which has been made and which is before us for answering.

5. Shri Pankaj Bagadiya vehemently submitted by placing reliance on the judgment of Division Bench of Andhra Pradesh High Court in the matter of Abdul Hameed Khan v. CIT : [1967]63ITR738(AP) , wherein, Andhra Pradesh High Court held that when the assessee carrying on business separately from his daughter and son-in-law advanced loan to them with interest payable and the daughter was maintaining the mercantile accounts and was crediting her father's accounts with interest accruing from time to time, mentioning such amount as 'bad debt', it was permissible deduction in view of law.

6. In the said case, legal opinion was sought and after satisfying that there was no chance of recovery of the said amount from the daughter of assessee, the assessee wrote off the said amount on 30-9-1955 and claimed it as a bad debt in computing profits for the year, 1956-57.

7. Shri Pankaj Bagadiya pointing out the said judgment of Andhra Pradesh High Court, submitted that the sister concern was having the Directors who the partners in the assessee-firm and, therefore, their act of advancing the loan to such sister concern allowing it to stand up to financial ditch was legitimate and these deductions of the said amount as 'bad debt' was permissible in law.

8. Shri Pankaj Bagadiya pointed out that for some years the said loan which was advanced to the sister concern Vinod Steel Ltd. was to be recovered, but, as said sister concern fell in financial ditch again, financial help was given to the said sister concern but even then the said concern could not come up and was subject to a

litigation in the nature of a suit being filed against it by Union Bank of India.

9. Shri Bagadiya further submitted, that when the condition of sister concern was so financially bad and all assets of it could have gone in satisfying the financial liability in repaying the loan to Union Bank of India, there was no case in making the demands to recover the said loan from it and, therefore, the assessing officer should not have blamed the assessee-firm on this point and should not have disallowed its claim to deduct that amount as bad debt.

10. Shri Pankaj Bagadiya submitted that in the circumstances, this court be pleased to answer the question referred to above in the negative by holding that the Tribunal was in error in holding that the assessee was not entitled to deduction of bad debt of Rs. 1,27,856. He submitted in support of his contention that the fact that the assessing officer and the Commissioner as well as the Tribunal had allowed the deduction of a sum of Rs. 71,007 to be deducted as bad debt was correct and when it was so, there was no point in disallowing the claim of the assessee for the deduction of Rs. 1,71,856.

11. Shri R.L. Jain, the counsel appearing for the revenue, submitted by placing reliance on the judgment of the Supreme Court in the matter of B.D. Bharucha v. CIT : [1967]65ITR403(SC) , that when a cinema exhibition company financing a film producer and distributor advanced a sum of Rs. 40,000 during the period March 3 to 5-11-1952, entering into an agreement with that firm under which a further loan was advanced to the tune of Rs. 60,000 in respect of distribution, exploitation and exhibition of a picture called 'Shabab' and charged a sum of Rs. 1,750 by way of interest on the initial advance of Rs. 40,000 and, thereafter, did not charge interest on the said sum of Rs. 40,000 or on the further advance, it could not get the advantage of deduction as 'bad debt'. In that matter since admittedly the picture was not released by the firm within the stipulated time, but, was, released, thereafter, on and from 4-4-1954, there was a contract of loan between the appellant and the firm in terms of clause 7 of the agreement by which the principal amount became repayable from the date to the appellant with interest at the rate of 9 per cent. The loss suffered by the appellant was not a loss of capital but a revenue loss and the amount of Rs. 80,759 was deductible as a bad

debt under section 10(2)(xi). The debt was in respect of and incidental to the business which was carried on by the appellant in the relevant accounting year, it was as found that it had become irrecoverable in the relevant accounting year and the amount had actually been written off as irrecoverable in the books of the appellant. Therefore, all the conditions for the grant of the allowance under section 10(2)(xi) were satisfied.

12. Supreme Court further held in the same matter that, 'It is not correct to consider loss as amounting to a loss of capital since, all payments reduce capital in the ultimate analysis. Losses in the running of a business cannot be said to be of capital nature.

13. BY quoting the same judgment the conditions for creating a particular deduction as bad debt can be enumerated as follows :

(i) it must be a proper debt or a part thereof;

(ii) of a revenue nature contra distinguished from capital nature;

(iii) which has been taken into account in

(a) computing the income of the assessee of that previous year or of an earlier previous year; or

(b) represents money lent in the ordinary course of the business of money-lending which is carried on by the assessee;

(iv) which is established to have become a bad debt in the previous year; and

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

Keeping in view the normal experience of the commercial transactions and the way which commercial community in common observes and transacts, the incidence can be pointed out further (i) a loan can be advanced by an individual to another either with interest or without interest or with a token interest; (ii) the loan can be advanced by a person to his near relatives without interest or at a reduced

rate of interest: (iii) the loan can be advanced by a main concern to its subsidiary concern with interest or at a reduced rate of interest; (iv) the loan can be advanced by the main concern to its sister concern with reduced rate of interest with permission to pay it at particular rests.

14. The criteria in respect of loan advanced by an individual to another would be of private adjustment of the financial needs but so far as the loan advanced by one commercial concern to another commercial concern is concerned it would be always indicative of a commercial transaction. Therefore, in respect of such commercial transactions, changing of interest would be a material criterion. Because, if that is not so, then there is possibility of a systematic reduction of the profit and resultant reduction of the capital which would be depriving the revenue of its income in the nature of taxes. In other words, it would be prejudicial to the interest of the revenue.

15. There may be such transactions, but, those transactions are to be brought in the account books in a proper way and that too with transparency. For the purpose of showing that transparency and bona fide, it is obligatory on the part of the firm which is advancing such loans to sister concern or subsidiary concern to show that proper efforts were made for the purpose of recovery of such advances/loans, otherwise such entries would be susceptible to inviting of an inference adversely, putting such entries in the gamut of attempts of reducing the taxable income by reducing the profit and resultant reduction in the capital. Therefore, the taxing officers are at liberty to put to scrutiny such transactions. They are entitled to probe the veracity of such transactions and come to a conclusion that whether a transaction/s is bona fide or an attempt to conceal the taxable income and go for evasion of payment of tax. But it is necessary to sound a caution alarm to assessing authority that such scrutiny should not be biased and with the presumption of dishonesty towards the assessee. Assessee should not be put to the dock of accused right from the beginning of the scrutiny. The scrutiny should be with dispassionate attitude.

16. In the present case, the assessing officer has elaborately discussed the salient features in its order which depict dispassionate impartial scrutiny and has rightly

come to a conclusion that the assessee-firm was entitled to have deduction of a sum of Rs. 71,007 only, and not the entire sum of Rs. 1,27,856. The Commissioner by its well-reasoned order confirmed the judgment and order passed by the assessing officer and the same has been done by the Tribunal.

17. Shri Bagadiya has vehemently attempted to demonstrate that the fraud which has been written by the taxing authority was pertaining to imperfect accounting and without mala fide intention but for that the assessee-firm has to blame itself.

18. In view of the above discussion this court has no alternative but to answer the question referred to us for our opinion, by answering it in affirmative; we hereby dispose of this matter but with no order as costs.

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