

In Re: Baldeodas Rameswar

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Court : Kolkata

Decided On : Aug-17-1931

Reported in : AIR1931Cal761

Appellant : In Re: Baldeodas Rameswar

Judgement :

1. On 13th May 1930, a petition was presented to this Court praying for an order that the Commissioner of Income tax who is the opposite party in these proceedings might be directed to state a ease under Section 66 (3), Income-tax Act (11 of 1922) for the opinion of this Court on the two questions sat out in the petition, namely:

(1) Whether the learned Assistant Commissioner was justified in upholding the decisions of the Income-tax Officer in disallowing the bad debts of Bhajaulal Mahadeo amounting to Rs. 4,80,373-15-0 in the circumstances as stated in sub-paras. (iii) and (iv), para. 6 of the petition under Section 66 (2) to the Commissioner, or, in other words, is the Income-tax Officer legally entitled to disallow the bad debt of Rs. 4,80,373 on the ground that the same had proved bad in the previous year although the asseesee 1, wrote off the same as bad debt in the assessment year in question and although in the previous year the assessee had reasonable expectation to receive some payment from the Official Assignee and (2) Whether the learned Assistant Commissioner was justified in law in upholding the decision of the Income-tax Officer in adding back a sum of Rs. 2,51,955-11-0 as unassessed interest under the circumstances as delineated in

sub-para. (v), para. 6 of the petition; or, in other words, is the Income-tax Officer legally entitled to disallow the claim for interest in view of the fact that the assessee had been assessed in the previous year under Section 23 (4) of the Act, and under Section 34 of the Act, in which income and all income which had escaped assessment in the opinion of the Income-tax Officer were assessed including income from interest on debts which proved bad ?

2. Upon that petition, an order was made by this Court on 25th August 1930 requiring the opposite party to state a case before this Court for its opinion with his own opinion on the said questions. That has now been done and the reference by the opposite party has come on for hearing.

3. As regards the first of the questions referred to above, nothing need be said because Mr. Banerji who appears for the assesseees has stated before us specifically that he does not propose to press that question. It is the second question which Mr. Banerji has pressed upon our attention and it appears to us after hearing arguments on both sides that the facts are as follows : The assesseees have been assessed to income-tax for the year 1926-27. The details of that assessment appear on p. 7 of the paper book. That assessment was in respect of the income during the accounting year 1981-82 Dewali and it appears that in making the assessment for 1926-27, the actual income of the accounting year 1981-82 Dewali alone was taken into consideration and there was no tax assessed on interest which accrued during the accounting year. The assesseees claimed set-off in respect of a large sum of money which, according to them, represented bad debts. These alleged bad debts consisted of several items. The Income tax Officer disallowed the item referred to in question (1) on the ground that the same became bad long before the accounting year. As regards the other items, he allowed set-off in respect of the principal amount only and disallowed the claim to set-off in respect of the sum of Rs. 2,51,955-11-0 which represented the interest on the principal amount of those debts.

4. The assesseees were dissatisfied with the assessment for the year 1926-27 and what they said to the Income-tax Officer was that, in respect of the accounting year 1980-81 when assessment was made in respect thereof under Section 23 (4)

as also under Section 34, the entirety of their income which had accrued during the accounting year 1980-81 Dewali had. been taken into consideration and therefore it must be taken that the Income-tax Officer had taken the amount of interest alleged to have accrued during the accounting year 1980-81 into his consideration and made the assessment accordingly. They alleged that as a matter of fact a sum of Rs. 2,51,955-11-0 was interest which was irrecoverable and, in the circumstances stated they were entitled to claim a refund or set-off in respect of this sum of Rs. 2,51,955-11-0. To this the Income-tax Officer replied that it appeared that, although the assessee had produced the books for 1981-82 and the books for 1979-80, they were careful in not producing the books for 1980-81 which was the relevant year for discussion on this question and he came to the conclusion that inasmuch as no materials had been supplied to him for arriving at a conclusion favourable to the assessee on the question as to whether or not this sum of Rs. 2,51,955-11-0 had been recovered on account of interest, the assessee were unable to claim a set-off or refund as against assessment for the year 1926-27.

5. The Income-tax Officer on p. 5, para. 7 of the paper book points out certain very cogent reasons in support of this conclusion that a claim such as was propounded by the assessee before him was not entertainable on the facts, We have examined those reasons for ourselves and we are of opinion that nothing has been shown by the assessee on the present record for coming to the conclusion that these reasons are such as should be rejected and that the order made by the Commissioner of Income-tax should on the present reference be revised. Further it is not stated anywhere in this paper book covering as it does nearly 20 pages that as a matter of fact, this sum of money representing interest had not been recovered or got in by the assessee at any time leaving aside all questions of the accounting year 1980-81 or 1981-82. In this state of the record, the Commissioner of Income-tax came to the conclusion that the assessee being people who were urging a claim of set-off had failed entirely to satisfy him that a case for set-off really existed and that, on the facts a set-off should be allowed. Ha thereupon rejected the assessee's claim.

6. The assesseees have now come before us and they have urged through their learned Counsel that they cannot be assessed to tax on the said amount of interest unless actually realized. Precisely so; but in the circumstances of the present case, who is to show that-it being the common ground that no interest had boon assessed to tax so far as the accounting year 1981-82 is concerned Further, the assesseees have argued that in as much as an assessment had already been made in respect of the previous accounting year under Section 3d, it must be taken that all income which had accrued and had escaped assessment had been assessed to tax and that therefore it must be held as a matter of law that this sum of Rs. 2,51,955-11-0 had already been assessed to tax. It is not desirable to pronounce opinions on academic questions of law. Assuming that it is a question of law, the answer to this depends upon an investigation of the facts and on the facts the assesseees are clearly out of Court they having failed to produce any materials before the Income-tax Officer in support of their contentions.

7. In this view of the matter, the assesseees have failed to substantiate the two points on which they desired the Income-tax Officer to state a case to this Court and they must pay the costs of this reference.