

In Re: Bissendoyal Doyaram

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Court : Kolkata

Decided On : May-06-1937

Reported in : AIR1938Cal636

Appellant : In Re: Bissendoyal Doyaram

Judgement :

Costello, J.

1. This matter relates to an assessment of the year 1935-36 on income from interest on securities, house property, business of dealing and brokerage in shares and other sources. In computing the income from business, the Income-tax Officer did not allow a debit of Rs. 1,13,535-3-0 which was written off by the assessee as a bad debt of one, M. G. Marcar which has been standing in the accounts of the assessee for the relative accounting period for the year which was 1990-91 Dewali, correspond-ing to the year ending October 1934. The assessee claimed that the deduction of the sum mentioned ought to have been allowed as a bad debt, because in fact it was a bad debt. The facts out of which the matter arises are very short. Originally there was a stock and share brokerage business carried on by a Hindu undivided family which was subject to the Mitakshara School of Hindu law, and that business was carried on under the style of Bissendoyal Gajanand. The family consisted of one Gajanand and his son Dayaram. Both these persons were engaged in the business. It appears that Dayaram entered into a transaction relating to the business without consulting the father, which

transaction resulted in a loss. Gajanand as karta of the family refused to pay this loss. A dispute accordingly arose between Gajanand and Dayaram and the latter instituted a suit for partition which was Suit No. 402 of 1923. This suit ended in an arbitration on 30th April 1924, and under the award of the arbitrators Dayaram was given a part of his share in the coparcenary assets and the debt due from M. G. Marcar which although nominally was Rs. 1,13,535-3-0 however was assessed for the purpose of the partition as being only of the value of Rs. 22,052.

2. Dayaram argued that the business which he was carrying on was really a part of the old business. The effect of the partition was to divide up the old business as between his father and himself, and that therefore when he himself conducted the business of a stock and share-broker as from the date of the award in April 1924, he was actually carrying on a part of the old business, and therefore he ought to be allowed to set off against the profit he made in the year in respect of which assessment was made, the sum which at that time was outstanding from M. G. Marcar. He contended that he ought to be allowed a set-off of the full sum of Rs. 1,13,535-3-0, or at any rate the value of the debt as stated for the purpose of the partition. The Income-tax Officer disallowed this deduction on the ground that the amount due from Marcar was really in the nature of a capital asset which had come over to the assessee in the year ending in October 1924. The Commissioner of Income-tax in the opinion which he had put before us said it-that is to say the amount of Marcar's debt-had nothing to do with the business which was being carried on by the assessee, and if he could not recover or did not choose to recover something which he got not in connexion with the business of his, what he had lost was a capital loss.

3. The question which we are required to answer is whether or not the assessee should be allowed a debit either of Rupees 1,13,535-3.0 or the sum of Rs. 22,052. The material matter for our consideration is certain provisions in the award of the arbitrators. It appears that as regards the outstanding debts which were due to the old business at the time of the partition, they are valued on 30th April 1924, after due consideration as to the nature of the debts and probabilities of realization; and according to the valuation which was made, a portion of the debts including the dues from Marcar was allotted to Dayaram and the other portion to his father

Gajanand. Under the award Gajanand was allowed to use the trade name and it seems, with the name went also the goodwill of the old business. He was allowed to use the name of Bisendoyal Gajanand for the business he was to carry on. He was allowed to retain the membership of the Calcutta Stock Exchange Association Limited, and he was in fact given the entire share in the Calcutta Stock Exchange Association Limited, which was standing in the name of Bissendoyal Gajanand. On the other hand his son Dayaram, with whose assessment we are now concerned, was allowed to carry on a separate business in any other name he should choose including a name which had in it, the name 'Bissendoyal' or 'Bissendoyal Dayaram' or any other combination except that of 'Bissendoyal Gajanand.'

4. It seems to follow therefore that the pre-sent assessee was not a successor to the old business. What he actually got was a share in the assets of the old business and that asset became capital in his hands. Therefore it must be taken that this debt which was due from Marcar to the old business came into the hands of Dayaram not as a debt due to him in respect of the business which he was carrying on or was about to carry on, not as a debt of the old business but simply as an asset which could be used as capital in his hands if he so chose to use it, assuming he could recover it. In the circumstances, we are of opinion that the Income-tax Officer was quite right in disallowing the deduction. The reference is answered in favour of the Crown with costs to be taxed according to the scale of the Original Side of this Court.

Williams, J.

5. I agree.

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