

PETITIONER:
POONJABHAI VARMALIDAS

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, AHMEDABAD

DATE OF JUDGMENT 09/10/1990

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 1 1990 SCR Supl. (2) 206
1992 SCC Supl. (1) 182 JT 1990 (4) 106
1990 SCALE (2) 698

ACT:

Income Tax Act, 1922: S. 10(2)(xi)/ Income Tax Act, 1961: ss 36(1)(vii), 36(2) and 41(4): Bad debts written off subsequently recovered--Business discontinued--Amounts whether assessable to tax.

HEADNOTE:

Section 10(2)(xi) of the Income Tax Act, 1922 provided for deduction of bad and doubtful debts. The proviso thereto laid down that if the amount ultimately recovered on any such debt was greater than the difference between the whole debt and the amount allowed the excess shall be deemed to be a profit of the year in which it was recovered. These provisions were re-enacted in the Income Tax Act, 1961 as s. 36(1)(vii) provides, subject to the provisions of sub-s. (2), for deduction of amount of any debt established to have become a bad debt in the previous year, whereas s. 41(4) provides for bringing to tax amounts of such bad debts, if recovered subsequently, as the income of the previous year in which it was recovered, whether the business in respect of which the deduction had been allowed was in existence in that year or not.

Certain amounts which had been allowed to be written off as bad debts in terms of s. 10(2)(xi) of the Income Tax Act, 1922 in the year 1959-60, but subsequently received by the assessee were sought to be brought to tax in the assessment years 1964-65, 1965-66 and 1967-68 under s. 41(4) of the Income Tax Act, 1961. The assessee's business had discontinued prior to the relevant years of recovery of the amounts. The orders of assessment were confirmed by the Appellate Assistant Commissioner. The Tribunal, however, held that the amounts could not be taxed under s. 41(4) of the 1961 Act for that section had no application to amounts written off in 1959-60 in terms of s. 10(2)(xi) of the 1922 Act when it was in force.

On a reference, the High Court held that the amounts in question were includable in computing the taxable income of the assessee in respect of the relevant years under s. 41(4) of the 1961 Act. It took the view that there was no inconsistency between the relevant provisions of the two enactments and that s. 24 of the General Clauses Act, 1897 was

attracted as a result of which the order in terms of which the amounts

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had been written off was deemed to have been made under the reenacted provisions, as contained in s. 36(1)(vii).

In these appeals by certificate, it was contended for the appellant that the relevant provisions of the 1922 Act and 1961 Act were not in pari materia, that s. 41(4) would be attracted only where the bad debt had been written off in terms of s. 36(1)(vii), and that what has been allowed as a deduction in terms of s. 10(2)(xi) of the 1922 Act could not on recovery be brought to tax under s. 41(4) of the 1961 Act, unless the business itself had continued to exist at the time of recovery.

Dismissing the appeals, the Court,

HELD: 1. If the amounts had been received prior to the repeal of the 1922 Act the entire transaction would have been covered by the provisions of section 10(2)(xi) of the Act, and the business having been discontinued prior to the relevant years of receipt, these amounts would not have been taxable. [209H; 210A]

Commissioner of Income Tax, Madras v. Express Newspapers Ltd., 53 ITR 250 referred to.

2.1 The effect of section 24 of the General Clauses Act, 1897, in so far as it is material, is that where the repealed and re-enacted provisions are not inconsistent with each other, any order made under the repealed provisions would be deemed to be an order made under the re-enacted provisions. [212B]

2.2 Section 10(2)(xi) of the 1922 Act is equivalent to sections 36(1)(vii), 36(2) and 41(4) of the 1961 Act. The repealed section 10(2)(xi) is thus a composite section containing the ingredients of the re-enacted sections 36(1)(vii), 36(2) and 41(4). Consequently, when a debt is written off by an order in terms of section 10(2)(xi) of the 1922 Act, the Income Tax Officer exercises the same power as he would have exercised on the enactment of section 36(1)(vii) of the 1961 Act. These two provisions are, therefore, consistent with each other. Section 36(1)(vii) is subject to the provisions of sub-section (2) of that section. Therefore, both sections 36(1)(vii) and 36(2) of the 1961 Act, being two of the ingredients of section 10(2)(xi) of the 1922 Act, must be read together with reference to an order under which debts had been written off. Accordingly, in the light of section 24 of the General Clause Act, 1897, the relevant order made under section 10(2)(xi) of the 1922 Act with reference to which the debt in question had been written off, would be

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deemed to be an order made under section 36(1)(vii) of the 1961 Act and such order is what is contemplated under section 41(4) of that Act. Any amount which is recovered on any such debt is attracted by the provisions of section 41(4) of the 1961 Act and is, therefore, chargeable to tax in terms of that sub-section to the extent of the 'excess' specified therein. [212C-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1431-33(NT) of 1976.

Appeals by Certificate from the Judgment and Order dated 27.2. 1976 of the Ahmedabad High Court in Income Tax Reference

Nos. 129 and 168 of 1974.

J.H. Parekh. P.H. Parekh and Ms. Shalini Soni, for the Appellant.

S.C. Manchanda. K.P. Bhatnagar and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

THOMMEN, J. These appeals under certificate arise from the common judgment of the High Court of Gujarat in the Commissioner of Income Tax, Gujarat 111 v. Poonjabhai Vanmalidas. 105 ITR 388 Guj. The assessee is the same in all the cases. The assessment years in question are 1964-65. 1965-66 and 1967-68. In the relevant previous years. the assessee received certain amounts and they were assessed under section 41(4) of the Income Tax Act, 1961 (hereinafter referred to as the "1961 Act"). The contention of the assessee was that he was not assessable under section 41(4) of the 1961 Act because these amounts had been written off as bad debts in the year 1959-60 and his claim for deduction, though initially disallowed by the Income Tax Officer. was subsequently allowed by the Income Tax Appellate Tribunal in I.T.A. Nos. 673-676 (AHD) dated 12.7. 1963. The business of the assessee had discontinued prior to the previous year in which any part of the amount was received, and consequently, it was contended. these amounts when received were not assessable to income-tax under section 41(4) of the 1961 Act as that section was not in pari materia with section 10(2)(xi) of the Income Tax Act, 1922 ('1922 Act') in terms of which the amounts had been written off as bad debts. This contention was rejected by the Income Tax Officer and the amounts were brought to tax. The orders of assessment were confirmed by the

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Appellate Assistant Commissioner. On further appeal by the assessee, the Tribunal held, accepting the assessee's contention, that the amounts could not be taxed under section 41(4) of the 1961 Act, for that section had no application to amounts written off in 1959-60 in terms of section 10(2)(xi) of the 1922 Act when it was in force. On a reference, the High Court held that the amounts in question were includable in computing the taxable income of the assessee in respect of the relevant years under section 41(4) of the 1961 Act. The questions referred were accordingly answered by the High Court against the assessee and in favour of the Revenue. Hence the present appeals.

Section 10(2)(xi) of the 1922 Act reads:

"10. Business:-(1)

(2) Such profits or gains shall be computed after making the following allowances, namely:

(xi) 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 the part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business. such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of assessee:

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered and if less, the deficiency shall be deemed to be a business expense of that year;

There is no dispute that the assessee's accounts were

not kept on cash basis. There is also no dispute that the assessee's business had discontinued prior to the year of recovery of the amounts in question, If the amounts had been received prior to the repeal of the 1922 Act the entire transaction would have been covered by the provisions of

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section 10(2)(xi) of that Act, and the business having been discontinued prior to the relevant years of receipt, these amounts would not have been taxable. See Commissioner of Income Tax, Madras v. Express Newspapers Ltd., 53 ITR 250. But the amounts in question here were recovered after the coming into force of the 1961 Act which repealed the 1922 Act. The question, therefore, is whether the amounts which had been written off in terms of section 10(2)(xi) of the 1922 Act, but subsequently received after the repeal of that provision, could be brought to tax in terms of the relevant re-enacted provisions. Tax is sought to be levied under the 1961 Act in terms of section 41(4) which reads:

"41. Profits chargeable to tax .--

4. 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.

This sub-section. refers to the deduction allowed in respect of a bad debt under the provisions of section 36(1)(vii) of the 1961 Act which reads as follows:

"36. Other deductions--(1). The deductions 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:

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Significantly sub-section (4) of section 41 of the 1961 Act specifically states that tax is attracted whether or not the business or profession in respect of which the deductions had been allowed continued to be in existence in the year of receipt. This is a fundamental deviation from the earlier provision contained in section 10(2)(xi) of the 1922 Act. Furthermore, sub-section (4) of section 41 specifically says that the deductions should have been allowed in respect of a bad debt under the provisions of section 36(1)(vii) in order to attract section 41(4).

The assessee, therefore, contends that the relevant provisions of the two enactments are not in pari materia, and what has been allowed as a deduction in terms of section 10(2)(xi) of the 1922 Act cannot be brought to tax under section 41(4) of the 1961 Act. Any order made under section 10(2)(xi) of the 1922 Act under which a debt was written off would not attract tax on recovery of the whole or part of such amount unless the business itself continued to exist at the time of the recovery. Furthermore, the assessee contends that sub-section (4) of section 41 of the 1961 Act is attracted only where the bad debt was written off in terms of section 36(1)(vii) of that Act, and not in terms of section 10(2)(xi) of the 1922 Act, the provisions of which are not in pari materia with either section 36(1)(vii) or section

41(4).

Rejecting the contentions of the assessee, the High Court held that there was no inconsistency between the relevant provisions of the two enactments and that section 24 of the General Clauses Act, 1897 was attracted as a result of which the order in terms of which the amounts had been written off was deemed to have been made under the re-enacted provisions, as contained in section 36(1)(vii), and consequently the amounts recovered on any such debt were chargeable under section 41(4).

Section 25 of the General Clauses Act, 1897, in so far as it is material, reads:

"24. Continuation of orders, etc., issued under enactments repealed and re-enacted--Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under

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the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted

The effect of section 24 of the General Clauses Act, 1897, in so far as it is material, is that where the repealed and re-enacted provisions are not inconsistent with each other, any order made under the repealed provisions is deemed to be an order made under the reenacted provisions. The question, therefore, is whether the provisions of the repealed section 10(2)(xi), under which the bad debts were written off as irrecoverable in the books of the assessee, are in terms re-enacted by the repealing Act. A comparative table furnished i. The Law and Practice of Income Tax, Kanga and Palkiwala (Seventh Edition-Volume II) shows that section 10(2)(xi) of the 1922 Act is equivalent to sections 36(1)(vii), 36(2) and 41(4) of the 1961 Act. The repealed section 10(2)(xi) is thus a composite section containing the ingredients of the re-enacted sections 36(1)(vii), 36(2) and 41(4). Consequently when a debt is written off by an order in terms of section 10(2)(xi) of the 1922 Act, the Income Tax Officer exercises the same power as he would have exercised on the enactment of section 36(1)(vii) of the 1961 Act. These two provisions are, therefore, consistent with each other. Section 36(1)(vii) is subject to the provisions of sub-section (2) of that section. Therefore, both sections 36(1)(vii) and 36(2) of the 1961 Act, being two of the ingredients of section 10(2)(xi) of the 1922 Act, must be read together with reference to an order under which debts had been written off. Accordingly, in the light of section 24 of the General Clauses Act, 1897, the relevant order made under section 10(2)(xi) of the 1922 Act with reference to which the debt in question had been written off, is deemed to be an order made under section 36(1)(vii) of the 1961 Act and such order is what is contemplated under section 41(4) of that Act. Any amount which is recovered on any such debt is attracted by the provisions of section 41(4) of the 1961 Act and is, therefore, chargeable to tax in terms of that sub-section to the extent of the 'excess' specified therein.

The contentions of the assessee thus fail, and the appeals are accordingly dismissed. No order as to costs.

P.S.S.

Appeals

dismissed.

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JUDIS