

PETITIONER:
AMARCHAND SOBHACHAND

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, MADRAS

DATE OF JUDGMENT:
29/07/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C. (CJ)
GROVER, A.N.

CITATION:
1971 AIR 720 1971 SCR (3) 469
1971 SCC (1) 458

ACT:

Income tax Act. 1922, s. 10(2) (vi), s. 66(1)-Bad debt May relate to money lending business of assessee or other business-Question referred by tribunal to High Court must cover both businesses when the claim can be related to either-Statement of case must contain Tribunal's findings on the facts of the case-Must not be mere resume of facts and arguments.

Supreme Court Practice-Appeal by special leave against, High Court's judgment in Income-tax Reference-Supreme Court will not interfere with finding of fact given by Tribunal on the evidence recorded in the case.

HEADNOTE:

The appellants were a registered partnership firm engaged in money lending business as well as business in certain chemical goods, and silk yarn. Another firm had a current account with the appellants between the samvat years 2003 and 2008. At the end of the latter year the said account had a debit balance of Rs. 268385-1-3. In the return of income for the assessment year 1953-54 the appellants claimed allowance for the said sum of Rs. 268385 as a bad debt written off as irrecoverable. The claim was disallowed by the authorities under the Income-tax Act, 1922. The Tribunal referred to the High Court under s. 66(2) of the Income-tax Act, 1922 the question whether on the facts and circumstances of the case the Tribunal's finding that the sum in question did not relate to the appellants money-lending business was correct. The High Court answered the question in the affirmative against the appellants. This Court in appeal by special leave re-framed the question to be answered by the Tribunal so as to cover not only the money-lending business of the appellants but also the business in chemicals etc. The Court directed the Tribunal to submit a supplementary statement of case. The supplementary statement of case submitted by the Tribunal was however found unsatisfactory in as much as it contained a summary of arguments on both sides but no findings on the facts of the case. Hence supplementary statement on 'facts' was called for. The findings given by the Tribunal

were against the appellants. On the contention that the conclusion reached by the Tribunal was not supported by proper discussion of the materials before it, HELD : The findings reached by the Tribunal were findings of fact and those findings were supported by the evidence on record. The Tribunal had found that the loans were not made in the course of money-lending business of the assessee nor in respect of any other business of the assessee. This finding covered the entire amount sought to be deducted. In view of this finding- which was binding on this Court, the answer to the question re-framed had to be in favour of the department. [423 B]

Also held : (i) The Tribunal in submitting its statement, of case must give not only the facts of the case or the arguments of parties but also its own findings on the, facts and evidence. [410 D]

(ii) When the assessee had money-lending as well as other business, its claim for a bad debt under s. 10 (2) (xi) of the Act must be considered in relation to both the businesses and the question submitted by the Tribunal must cover the claim in both its aspects. [418 F-419 A]

416

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 949 of 1966. Appeal by special leave from the judgment and order dated September 11, 1964 of the Madras High Court in Tax Case No. 181 of 1962.

M. C. Chagla and B. R. Agarwala, for the appellant.

S. T. Desai, R. N. Sachthey and B. D. Sharma, for the respondent.

[The appeal was originally heard by J. C. Shah, Ag. C.J., V. Ramaswami and A. N. Grover, JJ. The case was twice remanded to the Tribunal. The first Order of the Court remanding the case to the Tribunal was delivered by]

Shah, Ag. C. J. M/s Amarchand Sobhachand's firm registered under the Indian Income-tax- Act, 1922, carried on business at Madras in drugs, chemicals, mercury, camphor and silk yarn and as money lenders. There were two partners of the firm Mohanlal Sagmal and Seshmal Sobhachand, and Ramniklal and Lakshmichand minors were admitted to the benefits of the partnership, each with 7/32 share in the profits. The appellants had for a long time business relations with a firm styled "Bhojaji Sobhachand" carrying on business at Bombay as importers of yarn and also as agents and adathias. Sobhachand, one of the partners of Bhojaji Sobhachand with 16% share in the profit and loss is the father of Seshmal, Ramniklal and Lakshmichand, partners of the appellants.

In the books of account of the appellants which were maintained according to the mercantile system there was a current sarafi account in respect of their transactions with the Bombay firm in which were credited the funds transmitted from Bombay in respect of their business transactions. Entries relating to interest were posted till the end of Samvat Year 2006 in the account on the amount due at the foot of the account. The following is a table showing the balances at the end of the Samvat years 2003

Amount	Interest
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At the end of the Samvat Year 2003 Cr.16,951 00----

2004 Dr.1,02,188-4-5Dr. 2633-9-3

2005 Cr.27,815-0-0Dr. 483-1-9

2006 Cr.11,975-0-0Cr. 1008-7-3

2007 Dr.2,02,823-12-3----

2008 Dr.2,68,385-1-3

In the assessment for income-tax of the appellants for the assessment year 1952-53 relevant to the account year Samvat 417

2007 all item of Rs. 2,03,147-8-0 in the, account of the, Bombay was disallowed by the Income-tax Officer, but in appeal the amount was allowed.

in the return of income for the assessment year 1953-54 the appellants claimed allowance for Rs. 2,68,385/- due from the Bombay firm at the foot of their running account as a bad debt written off as irrecoverable. The Income-tax Officer disallowed their claim holding that :

"these transactions were mere accommodations which can have no bearing to the regular business carried on by the assessee."

The Appellate Assistant Commissioner agreed with the Income-tax Officer. He held that the debt . did not arise, in the course of the appellants' business as chemists and druggists nor in the course of their money-lending business. The Income-tax Appellate Tribunal accordingly confirmed the order of the Appellate Assistant Commissioner.

The assessee firm then applied to the Tribunal to refer the following question to the High Court of Madras

"Whether on the facts and in the circumstances of the case the disallowance of the bad debt of Rs. 2,68,385 is right in law ?"

The Tribunal rejected the application, but pursuant to an order made by the High Court of, Madras under s. 66(2) submitted a statement of the case on the following question "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the debt of Rs. 2,68,385/- was not one incurred in the course of money lending business of the assessee ?"

In the opinion of the High Court the debt of Rs. 2,68,385/- due to the appellants was not a bad and doubtful debt in its money lending business not a debt representing loss sustained in the other business. The question referred was, therefore, answered in the affirmative and against the appellants.

Section 10(2) (xi) of the Indian Income-tax Act, 1922, as in force at the relevant time provided :

"(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

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418

respect of that 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 the assessee, Provided....."

Clause (xi) was in two parts. A bad and doubtful debt due to the taxpayer, written off as irrecoverable in the books of account was properly allowable in computing the taxable profits from business, profession or vocation, where accounts were not kept on the cash basis, if the debt was in respect of a loan made in the course of the taxpayer's business as a banker or money-lender, or when the taxpayer was carrying on any other business the debt was in respect

of that other business.

debt written off relying upon both the branches of s. 10 (2) (xi) and by the application under s. 66(1) of the Income-tax Act a question covering both the branches of the section was also sought to be raised. But the question on which the Tribunal was called upon to state the case was in form imprecise and in import somewhat vague. A bad and doubtful debt due to an assessee in respect of banking or money-lending business is allowable under s. 10(2) (xi) if it is in respect of loans made in the ordinary course of such business. A bad and doubtful debt in respect of a business other than banking or money-lending is allowable even if it is not in respect of loan : but a debt due in the course of the business of a money-lending is not allowable unless it is, in respect of loans made in the ordinary course of his business. We are of the view that the question should have been referred in the form suggested by the appellants in their application under s. 66(1) with appropriate variations. In the interest of justice, we direct that the question be reframed as follows :

"Whether on the facts and in the circumstances of the case the Tribunal erred in disallowing the debt of Rs. 2,68,385/- written off by the assessee in their books of account as irrecoverable."

The two branches of the question as reframed then are (1) whether the debt or any part thereof is in respect of loans made

419

in the ordinary course of money-lending business of the appellants; and (2) whether the debt or any part thereof is in respect of the other business of the appellants.

We are of the view that before the question may be answered, it is necessary to call for a supplementary statement of the case from the Tribunal. The Tribunal's order is very brief : it gives no reasons in support of the conclusions. The argument based on the first part of s. 10(2) (xi) that the debts were due in respect of the business of the appellants other than money-lending was not considered at all, and the Tribunal disposed of the second part of the case by merely observing that it was an "accommodation" account to enable the Bombay firm to tide over the "financial crisis" threatening it in Samvat Year 2007, and that the transactions in the account were totally unconnected with the normal business of the appellants. An "accommodation" advance is a neutral expression : it may be of the nature of a loan advanced in the ordinary course of business by a money lender; it may be an advance the money-lending or other business of the assessee but not in the nature of a loan; or it may be wholly unrelated to the business of the tax-payer.

The statement submitted by the Tribunal is also inadequate. It contains only a summary of the business relations between the appellants and the Bombay firm, a statement as to the amounts due at the end of each year at the foot of the account, the interest if any charged and a summary of the orders made by the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal. The statement of the case does not analyse the evidence and throws no light upon the two branches of the argument raised before the Tribunal and which, in our view, arose out of the question on which they were required to submit a statement of the case.

Counsel for the Revenue, however, contended that there are three important circumstances which appear from the order of the Appellate Assistant Commissioner and the Income-tax

Officer from which it may be inferred that the advances made by the appellants to the Bombay firm were not in respect of loans in the ordinary course of the business of the appellants, nor in respect of their other business. Counsel said that (1) Sobhagchand Amarchand partner of the Bombay firm is the father of Seshmal one of the partners of the appellants and of the minors Ramniklal and Lakshmichand who are admitted to the benefits of partnership; (2) that large amounts of money were advanced shortly before the Bombay firm closed its business; and (3) that there was a consistent practice for paying or receiving interest on the

420
amounts due at the foot of the account, but no interest was charged by the appellants in respect of the dues at the foot of the account at the end of Samvat Years 2007 and 2008. But the Tribunal has not raised any inference from these circumstances and has merely observed that charging of interest cannot make it a money lending account.

We, therefore, direct that the Income-tax Appellate Tribunal do submit a supplementary statement of the case on the question reframed, on both the branches of s. 10(2)(xi) of the Indian Income-tax Act, 1922. The Tribunal will give opportunity to both the parties of being heard, but will restrict themselves to the evidence on the record. The supplementary statement to be submitted within three months from the date the papers reach the Tribunal.

[After receipt of the supplementary statement of case from the Tribunal the appeal was heard by J. C. Shah, K. S. Hegde and A. N. Grover, JJ. The order of the Court was delivered by]

Shah, J. By our order dated July 29, 1969 we called for the light of the two branches of s. 10(2) (xi) of the Indian Income-tax Act, 1922. We have now received a statement of case from the Tribunal. The Tribunal has set out in great detail the arguments advanced before it by the assessee and by the Revenue but it has not set out the facts found by it from the evidence on the record in the light of the arguments advanced. The statement of case is intended to be a finding on facts and not a catalogue of the arguments advanced at the Bar. Since the Tribunal has not found the facts we are constrained to send back the case again to the Tribunal for submitting to this Court a supplementary statement on facts found by the Tribunal. The Tribunal will submit the statement within three months from the date on which the papers reach the Tribunal.

[After receipt of the second supplementary statement of case from the Tribunal the appeal was finally heard by J. C. Shah, C.J., K. S. Hegde and A. N. Grover, JJ. The Judgment of the Court was delivered 'by]

Hegde, J. The appellant firm (which will hereinafter be referred to as the "assessee") carried on business in drugs, chemicals, mercury, camphor and art silk yam as also in money-lending, over a number of years. The accounting year with which we are concerned in this appeal is Samvat year 2008 commencing from October 31, 1951 and ending on Oct. 18, 1952. The firm

421

consisted of two partners, Mohanlal Baginal and Sashmal Sobha Chand. Two minors, Ramniklal Sobhachand and Lakshmichand Sobhachand were admitted to the benefits of the partnership. The assessee had dealings for several years with a firm known as "Bhojaji Sobhachand" (to be hereinafter referred to as the Bombay firm). Sobhachand Amarchand, a partner of the Bombay firm, is the father of Seshmal, Ramaniklal and Lakshmichand and he was having sixteen

percent share in the Bombay firm. That firm became insolvent in April 1952. The Bombay firm owed certain amount to the assessee. In the assessment of income-tax of the appellant for the assessment year 1952-53, relevant to the account year Samvat 2008, the assessee claimed a deduction of Rs. 2,68,385/- as bad debt due from the Bombay firm, incurred by that firm in the course of business transactions. The Income-tax Officer disallowed that claim holding that "these transactions were mere accommodations which can have no bearing to the regular business carried on by the assessee. In appeal the Appellate Assistant Commissioner agreed with the Income-tax Officer. He held that the debt did not arise in the course of the assessee's business as Chemists and Druggists nor in the course of their money-lending business. On a further appeal taken by, the assessee to the Income-tax Appellate Tribunal, the tribunal confirmed the order of the Appellate Assistant Commissioner. The assessee thereafter applied to the tribunal under s. 66(1) of the Indian Income-tax Act, 1922 to submit a statement of the case with the question "whether on the facts and in the circumstances of the case the disallowance of the bad debt of Rs. 2,68,385/- is right in law" to the High Court of Madras for its opinion. The tribunal rejected that application but pursuant to an order of the High Court under s. 66(2), the tribunal submitted a statement of the case on the following question

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the debt of Rs. 2,68,385/- was not one incurred in the course of money-lending business of the assessee."

The High Court opined that the debt in question was not a bad and doubtful debt in the assessee's money lending business nor a debt representing loss sustained in the other business. The question referred was, therefore, answered in the affirmative and against the assessee. Thereafter the present appeal was brought after obtaining special leave from this Court. At the hearing of the appeal this Court found that the tribunal's order was very brief and that it gave no reasons in support of its conclusions. It also found that the statement submitted by the tribunal was inadequate. This Court took the view that the question framed at

422

the instance of the High Court did not bring out the real question arising for decision. It accordingly reframed the question as follows

"Whether on the facts and in the circumstances of the case the Appellate Tribunal erred in disallowing a sum of Rs. 2,68,385/- written off by the assessee in their books of accounts as irrecoverable?"

By its order dated July 29, 1969 this Court called upon the Tribunal to submit a supplementary statement of case on the reframed question. The tribunal accordingly submitted a fresh statement of the case on the question referred. But that statement merely catalogued the arguments advanced at the bar. The tribunal did not give any findings on the points arising for decision. Hence by its order dated April 7, 1970, this Court directed the tribunal to submit a further statement. The tribunal has accordingly submitted a further statement.

The facts found by the tribunal are found in paragraphs 11 and 12 of the statement. They read :

" 11. We have taken into consideration the available materials and the rival submissions. The only facts in favour of the assessee are that incidental charges are

debited to the Bombay firm in respect of some of the remittances and there is a flow of moneys to the Bombay firm up to 10-3-1952 when the last of the remittances was sent to it before the firm collapsed in about April 1952. On the other hand, the narrations in the entries, as they stand, the failure to adjust interest in the account of the Bombay firm at the stage at which it became a debtor in Samvat year 2007, the manner in which the partner of the appellant-firm tried to explain the position in March, 1954 and the stand of the firm itself at all earlier stages support the case of the Department."

"12. Having considered all the circumstances of the case, we are of the opinion that the sums in question were not sent to the Bombay firm as loans made in the ordinary course of the money-lending business of the assessee nor in respect of any other business of the assessee. As this is the finding with regard to the whole of the amount of Rs. 2,68,385/- there is no question of locating any portion thereof as between the business of money lending or for any other purpose as preferred to para 7 above."

423

It is true as contended by the learned Counsel for the assessee that the conclusions reached by the tribunal are not supported by proper discussion of the material before it. It is also true that the tribunal after catalogueing the arguments advanced at the bar, has come to certain abrupt conclusions, but all the same it cannot be denied that the findings reached by the tribunal are findings of fact and those findings are supported by the evidence on record. The tribunal has found that the monies sent by the assessee to the Bombay firm were not loans made in the ordinary course of its money-lending business, nor in respect of any other business of the assessee.- This finding covers the entire amount sought to be deducted. In view of this finding, which is binding on this Court, our answer to the question reframed has to be in the negative and in favour of the Department. The appeal fails and is dismissed. No costs.

G.C.

dismissed.

424

Appeal