

(1978) 04 AHC CK 0037

Allahabad High Court

Case No: Miscellaneous Income Tax Reference No. 666 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Bhawani Prasad Girdhari Lal

RESPONDENT

Date of Decision: April 19, 1978

Acts Referred:

- Income Tax Act, 1922 - Section 10(1), 10(2)

Citation: (1981) 127 ITR 800

Hon'ble Judges: Satish Chandra, C.J; C.S.P. Singh, J

Bench: Division Bench

Advocate: Ashok Gupta, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision: Disposed Of

Judgement

Satish Chandra, C.J.

The assessee is a partnership firm. All the nine members belonged to the same family. In the previous year relevant to 1951-52 assessment, the assessee advanced a loan of Rs. 20,00,000 to Messrs. Bengal and Assam Investors Ltd., Calcutta. On June 23, 1960, the creditor and the debtor came to a settlement whereby a sum of Rs. 4,50,000, which was outstanding on that date, was paid up, inter alia, by transferring 150 ordinary shares of Messrs. Muir Mills Co. Ltd. and 600 preference shares of Messrs. Muir Mills Co. Ltd., Kanpur. In the settlement, the ordinary shares were valued at Rs. 600 per share, while the preference shares were valued at Rs. 290 per share, on the footing that the debtor-company had purchased those shares at that rate. The balance was to be paid in instalments.

2. The market value of the ordinary and preference shares on the date of settlement was Rs. 65 and Rs. 83 per share, respectively. The assessee in its own books credited the account of Messrs. Bengal and Assam Investors Ltd. with Rs. 9,750 being the market value of 150 ordinary shares at the rate of Rs. 65 per share and Rs. 49,800 being the market value of 600 preference shares at the rate of Rs. 83 per share. The

amount thus adjusted fell short by Rs. 2,04,450. This amount was written off in the profit and loss account. This sum includes a sum of Rs. 33,938 as interest from January 1, 1958, to June 30, 1959.

3. In its assessment for the year 1961-62, the assessee claimed an amount of Rs. 2,04,450 as a deductible loss. The ITO repelled the claim. The finding was confirmed in appeal. The assessee took the matter to the Tribunal. There was a difference of opinion. The Judicial Member agreed with the authorities below in rejecting the assessee's claim but the Accountant Member was of a different opinion. The difference was referred to the President who agreed with the Accountant Member.

4. The findings recorded by the majority are that the assessee's main source of income was the selling agency business from two or three mills belonging to the J.K. organization. It had received considerable sums as selling agency commission. From the year 1951-52 to 1970-71, it had received commission to the tune of Rs. 34,68,688 from the various concerns of the J.K. group. In addition, several sister concerns of the assessee-firm also drew their substantial source of income from agency commission from various J.K. group concerns.

5. Messrs. Bengal and Assam Investors Ltd. was also a company controlled by the J.K. organization. This company was trying to corner the shares of the Muir Mills Co. Ltd. To achieve this end, the Singhanias who controlled most of the selling agency concerns and also Messrs. Bengal and Assam Investors Ltd., threatened them to advance a sum of Rs. 20,00,000 to Messrs. Bengal and Assam Investors Ltd., Calcutta. This the assessee-company did by borrowing Rs. 12,50,000 from Messrs. National Insurance Co. Ltd., and pooling its available resources to make up the balance and ultimately they paid Rs. 20,00,000 to Messrs. Bengal and Assam Investors Ltd., part of which was done by telegraphic transfers of moneys due to the sister concerns of the assessee-firm. The investment company repaid part of the loan but in the year 1960, it was in a bad financial condition and the assessee-company pressed for readjustment of its loan. At this stage, the J.K. organization came into the picture and pressurised and coerced the assessee-company to enter into a settlement under which part of the debt was to be repaid by purchase of the shares of the Muir Mills Co. Ltd.

6. It has further been found that the assessee-company did not advance the loan as part of its money, lending business but since it was coerced to do so by those controlling the J.K. organization. Similarly, at the time of the recovery, the assessee-company was pressurised into the situation that it should not demand the payment of the entire balance in cash but by transfer of the shares in Muir Mills Co. Ltd. in part satisfaction of the debt. It has been found that the affidavit filed by one Ramji Agrawal, a partner of the assessee-firm, was believable because he was not subjected to cross-examination and further requiring corroboration of the allegations of coercion and pressurisation from the directors of J.K. organization was not facing reality. These allegations could not be corroborated by the directors of

the J.K. organization because that would have landed them in trouble. The majority opinion chose to believe the affidavit of Ramji Agrawal and held that the advance was not as part of the money-lending business nor was the settlement with consequent transfer of shares belonging to Muir Mills Co. Ltd., an investment. Consequently, the loss which occurred in the readjustment of the books was a business loss which was allowable u/s 10(1) of the Act on grounds of commercial expediency. It was emphasized by the majority opinion that the assessee-company was pressurised into agreeing to advance the loan as well as to accept the part payment in satisfaction of the loan because its selling agency business from the various mills of the J.K. organization, was likely to be jeopardized. The advance was consequently held to be a business transaction and the loss resulting from it was not a capital loss because it was not a case of investment by the assessee in the shares of the Muir Mills Co. Ltd.

7. The Tribunal ultimately allowed the claim of the assessee.

8. At the instance of the department, the Tribunal has referred the following question of law for our opinion;

" Whether, on the facts and in the circumstances of the case, the assessee-firm's claim of Rs. 2,04,450 has been rightly allowed as a trading or business loss on grounds of commercial expediency u/s 10(1) or u/s 10(2)(xv) of the Indian Income Tax Act, 1922 ? "

9. The various findings referred to above are basically findings on questions of fact. Learned counsel appearing for the revenue urged that there was no material in support of those findings. The affidavit filed by Ramji Agrawal which has been believed constituted good evidence to sustain these various findings. It was faintly argued that there was nothing in the affidavit which would sustain the finding that the advance of Rs. 20,00,000 was made under some coercion or pressure. The affidavit has not been annexed to the statement of the case. We are hence not in a position to affirm the contention of the learned counsel for the revenue. The members who constituted the majority have specifically referred to the affidavit and have held that the lack of corroboration to the allegations in the affidavit was not fatal to the case of the assessee.

10. On the facts found, there can be no manner of doubt that the assessee entered into a business transaction in order to keep its relations with the J. K. organization which was giving to the assessee the main source of its income. It is also evident that the assessee-company accepted the shares of Muir Mills Co. Ltd., not with a view to make an investment in them but because of commercial expediency in that it found that there was no other way to recover its debt though only part of it could validly be recovered. No doubt, the assessee-company must be deemed to have known that the market value of the shares purchased by it was much less but, as found by the Tribunal, it acted as a true trader and tried to save as much of its

money as well as business as was possible. The finding that the assessee acted on grounds of commercial expediency hence concludes the matter that it was a loss which was allowable u/s 10(1) or Section 10(2)(xv) of the Act.

11. Learned counsel for the revenue relied upon [Seth Banarsi Das Gupta Vs. Income Tax Officer](#), . In that case, the Tribunal had found that the shares had been acquired as an investment by the assessee-company. On this finding, it was held that the loss arising from the sale of shares was a loss of capital nature and, as such, was not an allowable deduction. The case is distinguishable on facts. Here the finding is that the assessee-company did not purchase these shares as a measure of investment. Learned counsel also relied upon [Ramnarain Sons \(Pr.\) Ltd. Vs. Commissioner of Income Tax, Bombay](#), . In that case, the finding was that in order to acquire a managing agency which was a capital asset, the assessee purchased the shares far in excess of the market price. The loss incurred by the sale of those shares was hence a loss of capital nature.

12. Learned counsel for the assessee has invited our attention to [Commissioner of Income Tax, West Bengal I Vs. Birla Cotton Spinning and Weaving Mills Ltd.](#), . In this case, it was held that the essential test which has to be applied to determine the deductibility of the expense is whether the expenses were incurred for the preservation or protection of the business from any such process or proceedings which might have resulted in the reduction of its income and profits and that such sums were actually and honestly incurred. These tests are fulfilled in the present case. The transaction is honest and was entered into with a view to keep the business going.

13. In the result, we answer the question referred to us in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to costs which are assessed at Rs. 200.