

(1952) 08 AHC CK 0016

Allahabad High Court

Case No: Misc. Case No. 289 of 1947 and Miscellaneous Case No. 66 of 1948

Madan Gopal Bagla

APPELLANT

Vs

Commr. of Income Tax, U.P. and
Ajmer-Merwara

RESPONDENT

Date of Decision: Aug. 27, 1952

Acts Referred:

- Income Tax Act, 1922 - Section 10

Citation: AIR 1953 All 141 : (1952) 22 ITR 464

Hon'ble Judges: Malik, C.J; V. Bhargava, J

Bench: Division Bench

Advocate: G.S. Pathak, for the Appellant; J. Swarup, for the Respondent

Final Decision: Dismissed

Judgement

Malik, C.J.

The point raised in this reference u/s 66(1) of the Income Tax Act is:

"Whether under the circumstances of the case Income Tax Appellate Tribunal was right in disallowing the bad debt of Rs. 26,251/- and the proportionate costs under question?"

2. The assessee is Seth Madan Gopal Bagla, an individual. He was a partner in two firms, Harnandrai Phoolchand at Calcutta and Phool-thand Mohanlal at Kanpur. There were two other partners in these firms, Raj Bahadur Chiranji Lal and Seth Pearey Lal. There was a dissolution of partnership and a sum of Rs. 48,510/- was found due to the assessee as his share of the partnership assets of the Calcutta firm and a sum of Rs. 14,541/- was found due to him as his share of the partnership assets of the Kanpur firm. Besides these two items there was a third item of Rs. 29,463/-. Raj Bahadur Chi-ranji Lal was the guardian of the assessee's father, L. Kashi Nath, who was a lunatic. He misspent or had failed to account for the money which had come to his hands as the guardian of the lunatic and had been held liable

to the extent of Rs. 29,463/-. We are not concerned with this third item.

3. The claim against R. B. Chiranji Lal together with interest and costs amounted to over a lac but the claim was settled by transfer of certain properties valued at Rs. 54,000/-. The balance was written off as bad debt and the assessee claimed that he was entitled to reduction in respect of that amount. The Appellate Tribunal worked out the proportion in which the sum of rupees fifty-four thousand was to be divided between the three items mentioned above and, while allowing a set off with respect to the last item, disallowed a set off with regard to the first two.

4. The assessee made an application that three questions of law may be referred to this Court but the Tribunal referred only one question which we have quoted above. The other two questions were disallowed. An application was made to this Court that the other two questions be also referred and some additional questions were also framed. That case is numbered and registered as Miscellaneous Case No. 66 of 1948. The two cases have been put up before us together for orders.

5. We have heard learned counsel for the parties. Mr. Pathak, learned counsel for the assessee, has urged that the facts have not been correctly set out in the statement of the case or in the appellate order of the Tribunal and that, as a matter of fact, the first two items arise out of a debt due from R. B. Chiranji Lal to the assessee and, therefore, the assessee was entitled to set off the balance after giving credit for the amount received.

6. As the facts were not very clearly stated in the statement of the case learned counsel for the parties, with the permission of the Court, read out to us the orders of the Income Tax officer, the Assistant Commissioner and the appellate order of the Tribunal. The Income Tax officer in his assessment order said as follows :

"On going through the accounts produced before me it appears that the debt relates to the loss suffered not by the assessee but by the unregistered firm styled as Plarnandrai Phoolchand in which the partners were R. B. Seth Chiranji Lal and Seth Pearey Lal besides the assessee. The loss was suffered by the Calcutta firm principally, because a debt amounting to Rs. 1,02,000/- due to the Calcutta firm by one Ram Narain, sister's son of R. B. Seth Chiranji Lal, could not be realised by it. At the time of the settlement of the accounts amongst the partners, it was claimed by the assessee that the above loss should be borne by R. B. Seth Chiranji Lal and Seth Pearey Lal and not by the assessee, because the debtor was related to these two partners. A sum of more than Rs. 50,000/- was, therefore, debited to the account of each of these two partners in favour of the assessee."

7. The Appellate Assistant Commissioner in dealing with this matter said:

" It is common ground that a loss was incurred in the Kanpur and the Calcutta firms and that the amount due against Seth Chiranji Lal viz. a sum of Rs. 48,510/- and Rs. 14,541 arose on the dissolution of the partnership. The very manner in which these

two bad debts arose against Seth Chiranji Lal clearly establishes that it was of the nature of a capital loss".

8. The Tribunal in its appellate order says :

"It may be noticed, at this stage that R. B. Ghiranji Lal became a debtor in Calcutta firm mainly as a result of one of his nephews, Ram Narain, failing to pay that firm a sum of Rs. 1,02,000/- owed by him. This debt of Ram Narain was transferred in equal shares to the accounts of both R. B. Chiranji Lal and Seth Pearey Lal, as Ram Narain is said to be related to both of them".

9. In the statement of the case though the facts were not so clearly stated but with reference to what we have already quoted the thing becomes clear. The Tribunal in its appellate order apportioned the entire sum of Rs. 54,000/- between all the three debts, excluding the amount of costs awarded to the assessee & held that out of the sum of Rs. 54,000 recovered, Rs. 17,200/- alone was in respect of the debt of Rs. 29,463/-, and the balance of Rs. 36,800/- was received on account of the other two items due from R. B. Chiranji Lal on the dissolution of the firms at Calcutta and Kanpur. The statement of the case in para 6 of the appellate order of the Tribunal is quoted in extenso and from this it appears that the loss in the business at Calcutta and at Kanpur, which was to be recovered from R. B. Chiranji Lal, after the dissolution of partnership, was Rs. 48,510/- and Rs. 14,541/-. Part of this loss was written off by transfer of property worth Rs. 54,000/-, the balance still remained due & must be deemed to be the loss in the business. That it cannot be said that there was any debt advanced by the assessee to R. B. Chiranji Lal and Pearey Lal, part of which was recovered and the rest became a bad debt. The Tribunal rightly relied upon the decision of the Privy Council " in -- "RM AR BN Arunachalam Chettiar v. C"ommr. of. Income Tax, Madras", (1936) 4 ITR 173, where dealing with, the question, whether in a partnership business, which has ended in a loss, the partner, who had invested money in that business, could claim the loss suffered as a bad debt, their Lordships held that such a loss cannot be "considered as a bad debt made by the assessee in the course of his money lending and still less could it be considered as having become bad in the year of accounts."

10. We, therefore, answer the question referred to us by the Tribunal in the positive. The Department is entitled to its costs which we assess at Rs. 400/-.