

Commissioner of Income Tax Vs W. Howrah and Co. (P.) Ltd.

Court: Calcutta High Court

Date of Decision: Feb. 1, 1989

Acts Referred: Income Tax Act, 1961 "Section 28

Citation: (1992) 194 ITR 345

Hon'ble Judges: Suhas Chandra Sen, J; Baboo Lall Jain, J

Bench: Division Bench

Advocate: B. Bagchi and M.L. Bhattacharjee, for the Appellant;

Judgement

S.C. Sen, J.

The following question of law u/s 256(1) of the Income Tax Act, 1961 ("the Act"), has been referred by the Tribunal:

Whether, on the facts and in the circumstances of the case, and on the correct interpretation of the agreement dated March 29, 1961, between

the assessee and New Central Jute Mills Co. Ltd., the Tribunal was right in holding that the assessee was entitled to the deduction of the loss of

Rs. 72,141 as business loss in the assessment year 1961-62 ?

2. The assessment is in respect of the assessment year 1961-62, for which the relevant accounting year was the year ended on March 31, 1961.

The facts found by the Tribunal, as stated in its order, are as follows :

One of the activities of the assessee was acting as principal broker for the supply of jute to jute mills. The assessee entered into contracts with the

jute mills in that respect. One of the jute mills was New Central Jute Mills Co. According to the contracts with the said jute mills, the assessee

agreed to shoulder the loss which the said jute mills might incur on account of the failure of the suppliers of raw jute to the said mills for whom the

assessee had acted as broker. In the year under consideration, six parties, namely, (i) Sumermal Koshar, (ii) Sarkar Bailing, (iii) Anandilal

Omprakash, (iv) Ramjidas Pahlajrai, (v) Ramjidas Jagannath and (vi) Suraj Prasanna Chowdhary, failed to supply raw jute to the New Central

Jute Mills Co. at the stipulated rates. The said jute mills purchased raw jute at higher rates and suffered losses on that account. The assessee later

on entered into an agreement on March 29, 1961, with the New Central Jute Mills Co. According to that agreement, the assessee agreed to pay

50 per cent, of the losses suffered by the New Central Jute Mills Co. on account of non-performance of the contracts by the said six parties. This

agreement to bear 50 per cent, of the loss was also subject to certain other conditions one of which was in case the New Central Jute Mills

realised any amount from the said six parties, the realisation was to be shared equally by the assessee and the New Central Jute Mills. The

assessee's share of 50 per cent, loss in respect of six parties amounted to Rs. 79,139, Subsequently, the New Central Jute Mills Co. was able to

make recoveries from Sarkar Bailing and Anandilal Omprakash and the assessee's share out of those realisations was Rs. 6,948. These

realisations were made in the succeeding assessment years.

3. The Income Tax Officer disallowed the claim of the assessee for deduction of loss, amounting to Rs. 79,139 paid by it to the New Central Jute

Mills Co. The assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, however,

affirmed the order of the Income Tax Officer on this point. The assessee thereupon came up in appeal to the Tribunal. The Tribunal, after

considering the agreement by which the assessee had agreed to bear the losses suffered by jute company on account of failure of the suppliers to

supply raw jute for whom the assessee had acted as a broker and after considering the subsequent agreement dated March 29, 1961, held that

none of the six parties who had agreed to supply raw jute to the New Central Jute Mills Co. could be treated as debtors in respect of the losses

suffered by the New Central Jute Mills Co. The Tribunal further held that the provisions of section 36(1)(vii) of the 1961 Act, or the provisions of

Section 10(2)(xi) of the Indian Income Tax Act, 1922, could not be invoked. The Tribunal held that the Income Tax authorities were wrong in

their respective approaches not only factually but also legally. The Tribunal remanded the case to the Appellate Assistant Commissioner for

reconsideration and passing a fresh order.

4. The Appellate Assistant Commissioner on remand observed that "the payment of damages to the New Central Jute Mills Co. Ltd. was bona

fide and was the direct consequence of the assessee carrying on business and acting as principal broker". The Appellate Assistant Commissioner

allowed the claim of the assessee on this point. The Income Tax Officer thereupon preferred an appeal to the Tribunal. It was submitted before the

Tribunal that the payment of loss by the assessee was only an ex gratia payment as no liability to pay loss arose to the assessee. It was argued that

the original agreement was to pay loss only in case the New Central Jute Mills Co. Ltd. obtained a decree for losses against the six defaulting

parties. It was the case of the Income Tax Officer before the Tribunal that no decree was obtained for losses against the six defaulting parties and

hence there was no liability on the assessee to pay any damages towards losses to the New Central Jute Mills Co. Ltd. Secondly, it was argued

that even otherwise the loss did not relate to the year under consideration as no decree had been passed during the year. Therefore, the loss should

not be allowed in this year. Lastly, it was argued that there was no liability to pay damages and no such liability arose on the basis of the original

agreement and there was no justification for any payment and there is no question of loss having arisen in the facts of this case. It was also argued

that, on the basis of the agreement, the assessee became entitled to share 50 per cent, of the realisations that might be made by the New Central

Jute Mills Co. Ltd. from the defaulting parties and the loss would arise only if the assessee failed to recover its 50 per cent, share of losses from

those parties and that the loss claimed by the assessee did not arise in the year under consideration.

5. The Tribunal, after consideration of the rival submissions, ultimately held:

The New Central Jute Mills Co. Ltd. suffered losses on account of failure of the above six parties to perform their part of the agreements for

supply of raw jute to the said mills. The suffering of the losses by the said company did not depend upon the obtaining of any decree against them.

The liability of the assessee to shoulder the losses arose when those six parties failed to perform their part of the agreement during the year under

consideration. The provision for obtaining of decrees of losses against these parties by the New Central Jute Mills Co. Ltd. and the assignment

thereof to the assessee was for the benefit of the assessee to enable it to recover the losses from those parties subsequently. It cannot, therefore,

be said that the losses to the New Central Jute Mills Co. Ltd. did not arise in the year under consideration and the liability of the assessee to

shoulder those losses also did not arise during the year. The assessee entered into the agreement with New Central Jute Mills Co. Ltd. on March

29, 1961, to reduce its liability for losses to 50 per cent, otherwise it was required to shoulder the entire losses. The entering into the agreement of

March 29, 1961, on the part of the assessee was on account of business expediency. The agreement dated March 29, 1961, entitled the assessee

to share the realisations which might be made by the New Central Jute Mills Co. Ltd. subsequently equally but that did not in any way affect the

liability of the assessee to bear 50 per cent, of the losses suffered by the New Central Jute Mills Co. Ltd. Subsequent realisations, if any, can be

taken into consideration in determining the income of the assessee in the year in which the realisations are made. In the circumstances of the case, it

cannot be said that the assessee did not suffer the losses claimed by it on the basis of the agreement dated March 29, 1961 with New Central Jute

Mills Co. Ltd. The payment of losses by the assessee is also not ex gratia entered into by the assessee with the New Central Jute Mills Co. Ltd.

We, therefore, affirm the order of the Appellate Assistant Commissioner.

6. There is no dispute that the assessee had paid the amount to New Central Jute Mills Co. Ltd. There is also no dispute that the six parties,

introduced by the assessee-company, had committed default. The assessee was acting as a broker. All these transactions have taken place in the

course of brokerage business of the assessee-company. The transactions are all incidental to the carrying on of the brokerage business. The real

question is whether the amount was spent by the assessee in the course of carrying on business as a broker. On the facts of this case, it cannot be

urged that this was not a commercial transaction. Having regard to the nature of the business activities of the assessee and the nature of agency

business, the amount of loss incurred during the course of such business activities must be allowed as deduction in computing the income of the

assessee's business. If any amount is recovered subsequently, then that will have to be treated as a revenue receipt of that year.

7. Next it was argued that such payment by the assessee will be treated as a capital receipt in the hands of New Central Jute Mills Co. Ltd. Even if

this payment is treated as a capital receipt by the jute mills, for the assessee it was revenue expenditure incurred in the course of carrying on of the

business. The loss fell upon the assessee, in the course of trading. In the facts of this case, we see no reason why this amount is not to be allowed

as deduction while assessing the income of the assessee.

8. The question is, therefore, answered in the affirmative and in favour of the assessee.

9. There will be no order as to costs.

Baboo Lall Jain, J.

10. I agree.