

## COMMISSIONER OF INCOME TAX Vs UNITED BANK OF INDIA.

**Court:** Calcutta High Court

**Date of Decision:** Nov. 5, 1990

**Acts Referred:** Income Tax Act, 1961 " Section 256(1), 36(2)(i)

**Citation:** (1993) 115 CTR 35 : (1993) 69 TAXMAN 505

**Hon'ble Judges:** Bhagabati Prasad Banerjee, J; Ajit K. Sengupta, J

**Bench:** Full Bench

### Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 256(1) of the IT Act, 1961, the following question has been referred to this Court for the asst. yr. 1979-80 :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the bad debts had been written off as

irrecoverable in the accounts of the assessee for the asst. yr. 1979-80 as required under s. 36(2)(i) of the IT Act, 1961 ?

2. Shortly stated the facts are the assessee, a banking company, claimed the following bad debts :

(i) Rs. 13,83,000 due by Ahmedabad Laxmi Cotton Mills Ltd.

(ii) Rs. 8,14,547 due by India Paper Pulp Co. Ltd.

3. The IAC (Asst.) noticed that the assessee did not square up the accounts and debtors by crediting the said amounts to their accounts and

instead the assessee credited the said amounts of debts to the "Bad Debts Suspense Account" and debited to the profit & loss account. This

according to the IAC (Asst.) did not amount to writing off in the accounts of the assessee for the previous year within the meaning of s. 36(2)(i) of

the Act. He also noticed that the approval of the board of directors for writing off these debts was given in March, 1979, when the previous year

had already ended on December, 1978. According to him the amounts in question were not written off in the accounts of the assessee for the

calendar year 1978. Hence, the claim was not allowed.

4. The assessee went in appeal before the CIT(A) who held that the assessee was entitled to the claim of these bad debts. The Revenue then came

in appeal before the Tribunal. The Tribunal, following the judgment of the Gujarat High Court in the case of SARANGPUR COTTON

MANUFACTURING CO. LTD. Vs. COMMISSIONER OF Income Tax, GUJARAT-I., held that the said debts were properly written off by

the assessee. Thus, the Tribunal upheld the order of the CIT(A).

5. Be it recorded that at the hearing before us no one appeared for the bank. The learned counsel for the Revenue contended that, until the

approval of the board was accorded, the Bank could not have written off the amounts in question. Since the approval came later in March, 1979,

after the close of the accounting period, the assessee is not entitled to the deduction claimed in this year under reference.

6. We have gone through the orders passed by the authorities below.

7. The amount of Rs. 13,83,000 in the case of Ahmedabad Laxmi Cotton Mills Co. Ltd. represents unrealisable interest charged from 12th

August, 1977 to 18th January, 1978. The company approached the Government of India to get it amalgamated with Arvind Mills Ltd. The latter

company, with the approval of the Gujarat High Court, got the permission to get the possession of Ahmedabad Laxmi Cotton Mills Co. Ltd. One

of the clauses of the scheme of merger of the debtor-company with Arvind Mills Ltd. is that no interest would be payable to the assessee-bank for

the period from the date of closure of the debtor company, i.e., from 12th August, 1977 to the date on which the scheme became finally operative.

The scheme became operative from 18th January, 1978.

8. In these circumstances and with a view to reopening the closed mill and thereby securing the principal to the extent of rupees two and half

crores, the bank had to agree to the proposal of the company and accordingly had to write off from the accounts of 1978 a sum of Rs. 13.83 lacs

in respect of the unrealisable interest charged on the account of Ahmedabad Laxmi Cotton Mills Ltd. in terms of the special condition of scheme of

amalgamation of Ahmedabad Laxmi Cotton Mills Company Ltd. with Arvind Mills Ltd. with the approval of the board of directors of the bank.

9. In this connection, the concerned officer of the Bank placed a note dt. 19th March, 1979 along with a resolution before the board of directors

for its approval. Para 4 of the said note reads as under :

In the circumstances we recommend that the amount of Rs. 13.80 lacs, being the interest charged but not recoverable as mentioned hereinabove,

be written off from 1978 accounts of the bank. The Board is requested to approve our recommendation and to pass the following resolution :

Resolved that the recommendation of the Dy. Chief Officer (R&C) in his note dt. 19th March, 1979 for writing off from 1978 accounts a sum of

Rs. 13.83 lacs in respect of the unrealisable interest charged in the account of Ahmedabad Laxmi Cotton Mills Ltd. in terms of a specified

condition of the scheme of amalgamation of Ahmedabad Laxmi Cotton Mills Ltd. with Arvind Mills Ltd. be and is hereby approved.

10. In respect of India Paper Pulp Co. Ltd., the assessee has claimed deduction of Rs. 8,14,543 which is included in the aggregate claim of Rs.

27,78,823. The assessee had claimed another amount of Rs. 6 lacs in respect of the same debtor which is not included in the figure of Rs.

27,78,823. In connection with the sum of Rs. 8,14,518 the concerned officer of the bank placed before the board of directors a note with the

following recommendation :

Recommendation;

In view of the foregoing, we recommend that an amount of Rs. 8,14,547.51 be written off from our profit & loss a/c for the year 1978. If our

recommendation is approved, the Board may kindly adopt the following resolution :

Resolved that the recommendation of the Dy. Chief Officer (R&C) in his note dt. 15th March, 1979 for writing off an amount of Rs. 8,14,547.51

from 1978 account on account of write back of interest charged in the account of India Paper Pulp Co. Ltd. caused by restructuring of different

accounts and charging of concessional rates of interest with retrospective effect from 1st April, 1977 be and is hereby approved.

11. It is stated that the approval of the board of directors was obtained on 29th March, 1979.

12. It is not disputed that those debts have become bad, but the only question was whether this should be allowed in the year under reference or

not. According to the Tribunal, the approval of the board of directors for writing off the debts is an internal matter of the assessee-company and

question as to whether the debts became bad in the previous year would not depend on the said approval. The Tribunal, therefore, held as follows

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Approval of the board of directors for writing off the debt can be obtained only after due processing of the said debt. It, therefore, cannot be

normally expected that the approval of the board of directors should be obtained before the close of the previous year in which the debt has

become bad. On the facts of this case, it has been questioned that the said debts in fact became bad in the instant previous year. We, therefore,

find no force in the objection of the Department that approval of the board of directors was not obtained before the close of accounting year.

13. The Tribunal found as a fact that the assessee-bank had posted the entires in the profit and loss account and corresponding entries in the bad

debt reserve account. According to the Tribunal, that would be sufficient compliance with the statutory requirement for writing off an irrecoverable

debt. The Tribunal, therefore, held that the aforesaid two amounts should be allowed as bad debts.

14. Our attention has been drawn to the decision of the Gujarat High Court in the case of Commissioner of Income Tax Vs. Karamchand

Premchand Pvt. Ltd., . In that case the assessee-company claimed deduction of an amount paid as remuneration to three of its directors. The

directors had been rendering extra services for a long time but had not received any remuneration. At a general meeting held in September, 1967

the shareholders of the assessee-company passed a resolution authorising remuneration to the directors. Subsequently, the resolution was amended

in January, 1968 and it was decided to pay an amount of Rs. 5,14,157 by way of remuneration to the aforesaid three directors for the year of

account ended on 31st March, 1967. There the Gujarat High Court held that the remuneration accrued to the directors not by reason of services

rendered by them but only on account of the resolution passed by the company. Therefore, even if related to services rendered in earlier years, it

had to be treated as income arising in the accounting year in which the resolution was passed and consequently the expenditure could also be

claimed in that year. The amount of Rs. 5,14,157 was held to be allowable in the asst. yr. 1968-69. Mr. Mitra, the learned counsel for the

Revenue, therefore, contended that, as in the instant case the approval of the board of directors was accorded in the subsequent assessment year,

the bad debt could not be allowed in the year under reference. We are, however, unable to accept this contention. Firstly, the case of Karamchand

Premchand Ltd. (supra) has no application to the facts of this case. The accounts of the company are generally made up for every year after a

particular date at a later point of time. A company is entitled in law to finalise later as to what was the position of its accounts as upto a particular

date. A company can similarly finalise its accounts for various purposes at a later date with retrospective effect. In the accounts necessary entries

were made for writing the debt as bad in the light of the facts and circumstances of the case. Recommendation was moved by the concerned

branch of the bank, to write off the amounts in dispute which was forwarded to the board of directors for approval. The board of directors

accepted and approved the recommendation and adopted resolution to that effect. In view of the process involved in the preparation of accounts,

until the recommendation is accepted and resolution passed by the directors, the accounts do not become final. In such a case the approval of the

board of directors could not have been obtained before the close of the accounting year. It is only when such resolution is passed the accounts

become final. The resolution approving and accepting the recommendation relating to the treatment of certain items, must be related back to the

date upto which the accounts are finalised and such determination or approval must be treated as being effective from that date. By being

retrospectively effective, the nature and character of the entires have not been changed.

15. For the forgoing reasons, we are unable to accept the contention of the Revenue and we answer the question in the affirmative and in favour of

the assessee. There will be no order as to costs.

BHAGABATI PRASAD BANERJEE, J. :

I agree.