

**(1989) 03 CAL CK 0060**

**Calcutta High Court**

**Case No:** IT Ref. No. 328 of 1987

SOORAJMULL NAGARMULL

APPELLANT

Vs

COMMISSIONER OF INCOME  
TAX.

RESPONDENT

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**Date of Decision:** March 1, 1989

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1)

**Citation:** (1991) 99 CTR 170 : (1991) 58 TAXMAN 162

**Hon'ble Judges:** Suhas Chandra Sen, J; Bhagabati Parsad Banerjee, J

**Bench:** Full Bench

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### **Judgement**

SUHAS CHANDRA SEN, J. :

The Tribunal has referred the following two questions of law under s. 256(1) of the IT Act, 1961 :

"(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the assessee was not entitled to deduction of Rs. 23,25,280 on account of interest ?

(2) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the assessee was not entitled to deduction of Rs. 31,13,115 as bad debt ?"

In this case the relevant asst. yr. is 1975-76 for which the accounting year is the period ended on R.N. of Sambat 2031 (year ending in March/April 1975).

The assessee had made an application under s. 256(2) of the IT Act, 1961 to refer certain question of law, which had not been referred by the Tribunal and this Court reframed the question and issue Rule in Matter No. 3906 of 1988. The question is as under :

"Whether the finding of the Tribunal that the assessee shall not be entitled to deduction of Rs. 31,13,155 as bad debt is based on any evidence or contrary to the evidence on record or whether such conclusion is otherwise unreasonable or perverse?"

The rule was made absolute on 6th February, 1989. Since paper book had already been filed in respect of ITR No. 328 of 1987 and all the facts are before us, we have decided to dispute with filing of a separate paper book and a separate statement of case and dispose of this reference alongwith the question that has been directed to be referred by this Court under s. 256(2) of this IT Act, 1961.

2. The first question relates to deduction of an amount of Rs. 23,25,280. The facts found by the Tribunal have been set out in the statement of case, which are as under :

"The assessee claimed deduction of Rs. 23,25,280 on account of interest payable to M/s. Chandpur Jute Co. on the investment made with the assessee firm. The contention of the assessee was that the loan taken by it during the years from 1951 to 1956 @ 4.5% p.a. The assessee followed the mercantile system of accounting. It was also its contention that the genuineness of the loan was never disputed by the IT authorities.

The creditor filed a suit being suit No. 1490 of 1969 against the assessee firm in the High Court at Calcutta in the year 1969 for Rs. 3,70,97,475 including interest till the date of filing of the suit with a prayer for grant of interest pendente lite and future. The assessee disputed the claim in toto on various grounds including that the suit was barred by limitation. The main contention of the assessee in the said suit is that the said creditor was its own benamidar and was not the real owner of the funds. According to the assessee the creditor was a name lender to act as a conduit pipe for flowing of the funds from Bengal Jute Mills Ltd. to it and nothing was owed by the assessee to the creditor. The said suit is still pending before the Calcutta High Court. Nothing was paid by the assessee to the said creditor after 14th September, 1968 either towards principal or towards interest. The ITO observed that even if any interest became payable by the assessee to the creditor that would be payable under the order of the Court under s. 34 of the CPC and that was disallowable item.

The CIT on appeal upheld the order of the ITO. The assessee preferred a further appeal to the Tribunal. The Tribunal examined the facts and dates and came to the conclusion that the ITO was right in disallowing the claim of the assessee. A point has been taken by the assessee that the genuineness of the loan has not been questioned by the Department in the earlier years and it has not been questioned even now. The ITO specifically has said that the records of M/s. Chandpur Jute Co. the alleged money lender reveal that the claim of the assessee firm was disputed in the suit being Suit No. 1490 of 1969 filed by M/s. Chandpur Jute Co. This suit was still

pending before the High Court at Calcutta. From the copies of the plaint petition and affidavit-in-opposition it appears that no amount of interest was being received by Chandpur Jute Co. from Soorajmull Nagarmull for a long time past and the suit was instituted for recovery of the principal amount together with interest accrued thereon. In affidavit-in-opposition Soorajmull Nagarmull denied the existence of loan due to Chandpur Jute Co. It was stated that nothing was owing to M/s. Chandpur Jute Co. and that the said company was at no material point of time in a position to make any investment of M/s. Soorajmull Nagarmull. The ITO also observed that apart from the merit of the assessee's explanation regarding the genuineness of the loan credited to the books of account in the name of the company, question remains that the alleged loan credited was disputed by the creditor in money suit filed by them, which is also still pending. From this it cannot be inferred that the ITO had held the loan transaction was genuine. On the contrary, according to the ITO, apart from the genuineness of the loan there was no other reason why he was not willing to allow the interest as deductible."

3. The Tribunal's findings are based on the facts that have been brought on record. The Tribunal noted that the assessee had stated in the written statement filed in the suit that the suit was barred by the law of limitation. It had further stated that all the acknowledgements given by the assessee and relied upon by the creditor were denied. The liability of the creditor had been denied by the assessee in toto. The Tribunal observed, where the claim of the creditor for principal is itself in litigation, the result of which is unknown, it was futile to make an exercise for knowing the probable pendente lite interest. The Tribunal ultimately on review of the facts came to the conclusion that the claim of deductibility of interest could not be allowed in the facts of this case.

4. It has been argued before this Court that the Tribunal has misunderstood the materials that were placed before it. Reliance was placed on the written statement that was filed in the suit No. 1490 of 1969 filed by Chandpur Jute Co. against Soorajmull Nagarmull, a firm duly registered under the Indian Partnership Act. The written statement was affirmed by one Mohan Lal Jalan, a partner of the defendant firm, who stated that he was fully acquainted with the facts and circumstances of this case. In the written statement it was averred that there was no real transaction between the plaintiff and the defendant in the manner alleged or otherwise or at all. It was specifically denied that any money was actually lent or advanced or that such moneys were really repayable with interest as alleged or at all. The suit was based on the entries in the book of accounts which were fictitious. It was further averred in paragraph 6 that as there was no real money lending transaction between the parties, the question of actual payment of any interest did not arise. It was denied that any moneys were really lent or advanced to the defendant or repaid by the defendant or that there was any agreement as to the alleged rate of interest. The entire case in the plaint was fictitious and the correct position appears from the written statement. It was further averred in paragraph 7 that the allegations

regarding loans and advances and repayments were denied because no real or genuine transaction took place between the parties. In paragraph 9 it was averred that the question of making any payment to the plaintiff never arose because nothing was due or owing by the defendant to the plaintiff.

5. On behalf of the assessee it has been submitted that there are certain other paragraphs which, if properly read, will reveal that the loan transaction was genuine. But it appears that there is a categorical statement that such entries did not represent genuine loan transactions but were merely cross entries in the relevant books of accounts.

6. The question is whether the Tribunal had any material before it to come to the conclusion that the interest could not be allowed because there were doubts about the genuineness of the loan itself. the assessee had denied the loan categorically and in the circumstances, following the mercantile system of accounting, the assessee could not claim that the interest on the loan amount had accrued. In fact the assessee has taken contradictory stand in the two proceedings. In the written statement, it has denied the liability to repay the loan. The genuineness of the loan has been denied. Therefore, there cannot be any question of repayment of that loan. Before the ITO, the assessee had asserted that the took entry was genuine. Money was actually lent. The interest was due and payable and the assessee was entitled to claim this amount as deduction on the basis of mercantile system of accounting.

In the background of these facts and the contradictory stands taken by the assessee, we are of the view that the Tribunal was entitled to reach the conclusion that the loan was not genuine. The finding is basically a finding of fact and there was sufficient material on record on the basis of which the Tribunal could reach this conclusion.

7. The facts relevant to the second question has been stated by the Tribunal in the statement of facts as under :

The assessee claimed bad debt of Rs. 31,53,115 consisting of Rs. 27,40,000 as principal and Rs. 4,13,115 as interest due thereon due for the years 1969 to 1971 due from Dhemo Main Collieries & Industries Ltd. (hereinafter referred to as the debtor). The debtor took a loan of Rs. 25,00,000 from Shri Hanuman Jute Mills, one of the units of the assessee, on 30th July, 1968 and executed a deed of hypothecation creating a charge on some of its properties with a stipulation to pay interest at 6% p.a.

The original loan was given during the previous year relevant to the asst. yr. 1969-70. In three consecutive assessment years the amount of interest accrued on Rs. 25 lakhs was credited by the assessee in the profits & loss account as detailed below :

Assessment year	Amount of Interest  Rs.
1969-70	1,13,115
1970-71	1,50,000
1971-72	1,50,000
Total	4,13,115

The said amount of Rs. 4,13,115 was taxed in the aforesaid three assessment years. Thereafter the assessee claimed Rs. 27,40,000 on account of principal and Rs. 4,13,115 on account of interest as bad debt. It was stated by the assessee that collieries owned by the debtor were nationalised on 1st Mar, 1973 and the only compensation payable to the debtor in terms of the Schedule to the Coal Mine (Nationalisation) Act, 1974 was Rs. 9,27,000 which according to the opinion of its solicitor was wholly inadequate for discharging even the liabilities of the debtor regarding the priority claims mentioned in s. 21 of the Coal Mines (Nationalisation) Act. The assessee thus claimed the said debt a bad debt. The ITO considered the claim of the assessee in extenso. He observed as under :

"Thus unit of the assessee firm, i.e. Sri Hanuman Jute Mills is managed and controlled by Sri M. L. Jain. In the past Sri. D. N. Jalan filed a suit before the High Court at Calcutta in the case No. 1886 of 1963 for dissolution of the firm and thereafter although the firm was not dissolved the status quo was maintained by the partners and as a result this jute mill was under the absolute control and management of Sri M. L. Jalan who is maintaining separate books of accounts and final accounts in the name of Shri. Hanuman Jute Mill. Apart from the business of jute mill operations this unit had some investments under the head "Loan & Advance" which are completely separate from the "Book Debts" of the business as is apparent from the balance sheets for the several years past. The assessee's investment with the said company is thus an investment account under the head "Loan & Advance" and was receiving interest thereon. It was not at all trading debt arising out of the jute mill operations. This will be more apparent from the records of the asst. yr. 1972-73 when the assessee had made investments with the said company for an aggregate sum of Rs. 2,40,000 although it did not charge any interest thereon. It is also found that from the asst. yr. 1972-73 onwards that the assessee did not charge any interest. So the advance made to the said company from the year 1969-70 onwards are not at all the form of any trading operation, but

it was simply an accommodation loan".

He found that the said claim was not in connection with the trading activity of the assessee and it also did not represent the money lent in the ordinary course of business of money lending. He noticed that there was no element of money lending in the said transaction inasmuch as that no interest was agreed to be charged by the assessee on the subsequent loan of Rs. 2,40,000. According to him entired by the amount of Rs. 27,40,000 was investment of capital and not in connection with any money lending activity. He also took into account the fact that no interest was credited by the assessee since the asst. yr. 1972-73 onwards. He also notice that the award of compensation of Rs. 9,27,000 to debtor was not final since the debtor had further agitated the matter before the Supreme Court and the judgment of Supreme Court was rendered in 1980, that is to say, long after the instant assessment year. Further more the assets of the debtor were not limited to the compensation of Rs. 9,27,000; the debtor had other assets as were reflected in its balance sheet for the year ending 31st December, 1973. They were as under :

1. Cash at Bank	81,616
2.     Loans     & Advance	1,93,820
3. Sundry debtors	11,95,933
	14,71,372

The ITO also took into consideration the fact that the assets of the debtor were mortgaged with the assessee. He considered the provisions of sub-s. (3) of s. 6 and s. 22 of the Coal Mines (Nationalisation) Act, 1973, according to which a person holding any charge, lien or other interest in or in relation to any property of the coal mine vesting in the Central Government shall have priority over all other debts. Thus in substance the finding of the ITO was that the said amount did not qualify for being claimed as bad debt, and alternatively it did not become bad particularly in the instant assessment year."

The CIT on appeal uphold the order of the ITO and the assessee further appealed to the Tribunal. The Tribunal took note of the facts that the unit of the assessee, viz., Shree Hanuman Jute Mills wherefrom the said loan was given had line of business different from money lending. It was engaged in the business of manufacture and sale of jute goods. The Tribunal also took into consideration the money lending business. Casual lending of money to one or two persons or making of an accommodation loan or investment or surplus money not could not amount to

money lending in the ordinary course of business.

The Tribunal also took notice of the fact that in the earlier years the question whether the business of the assessee company was money lending, was not gone into. It was open to the ITO to go into that question on this particular year. The Tribunal also took into consideration that the assessee had stopped crediting any interest into the profit and loss account and had stopped offering the interest to tax on and from the asst. yr. 1972-73 under any other head. In the year 1971 a further loan of Rs. 3,40,000 was given without interest to the same party. This conduct of the assessee could not be like a business man engaged in money lending in the ordinary course of business. The Tribunal further observed that the ITO was justified in taking into account the balance sheet of several years past of Shree Hanuman Jute Mills showing the investments under the head "Loans and advances" as against "book debts".

8. On behalf of the assessee, it was argued that because of the nationalisation of the coal mines, the debts had become bad. The loan became irrecoverable. An alternative reason not to accept the claim of the assessee was given. It was only upon nationalisation of coal mines on 1st May, 1973 that the loan became bad in the asst. yr. 1974-75, for which the previous year ended in April, 1974. But nothing has happened in this particular year for which the assessee could write off the debt.

9. In our opinion, it is not necessary to go to the second aspect of the matter. The Tribunal has given sufficient reasons for not accepting the assessee's contention that the loan was given in course of money lending business. It has been held by the Supreme Court in the case of [Bank of Bihar Ltd., Patna Vs. Commissioner of Income Tax, Bihar and Orissa](#), that whether a debt is bad, is one of fact and if there is some evidence to justify the conclusion of the Tribunal it is not open to the High Court in a reference under s. 66 of the IT Act to reappraise the evidence.

The findings of fact are against the assessee. The fact finding authority has held that the assessee was unable to prove that the loan was given in course of money lending activity. The assessee was unable to prove that it had lost all hope of recovery of this alleged loan in this particular year of account. There are sufficient materials which have been brought on record by the Tribunal in support of its conclusion. There cannot be any question of perversity or any error of law in the facts of this case.

10. Under the circumstances, the question Nos. 1 and 2 are both answered in the affirmative and in favour of the Revenue. The other question which has been directed to be referred under s. 256(2) is also answered in the negative and in favour of the Revenue. There will be no order as to costs.

The ITR No. 328 of 1987 as well as matter No. 3906 of 1988 are both finally disposed of by this order.

11. Prayer is made for certificate of fitness for appeal to the Supreme Court. There is no material question of law involved in this reference. Hence, this prayer is refused.

BHAGABATI PARSAD BANERJEE, J. :

I agree.