

**(1945) 03 BOM CK 0026**

**Bombay High Court**

**Case No:** Income-tax Reference No. 25 of 1944

NATIONAL PETROLEUM CO.,  
LTD., BOMBAY

APPELLANT

Vs

COMMISSIONER OF Income Tax,  
BOMBAY.

RESPONDENT

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**Date of Decision:** March 26, 1945

**Citation:** (1945) 13 ITR 336

**Hon'ble Judges:** Ghagla, J

**Bench:** Division Bench

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### **Judgement**

GHAGLA, J. - In this reference the assessee's contention is that a sum of Rs. 1,34,300 became a bad debt in the accounting year and he is entitled to deduct it from the profits of that year. The facts shortly are that the appellant company was floated mainly with the object of acquiring the petroleum business of Ishardas Ramchand of Bombay. Ishardas had imported from Rumania petrol in two ships and they arrived at Calcutta. The Port Trust authorities demand duty at a certain rate, Ishardas' contention was that he was liable to pay duty at a lower rate, but he ultimately paid to the Port Trust authorities duty at the rate claimed under protest. He then made various representations to the Governor-General in Council and in respect of one of the shipments he obtained certain reliefs; but with regard to the other shipment, the Governor-General in Council refused to grant any relief. The business of Ishardas was taken over by the appellant company by an agreement dated the 5th of June 1934, and the company filed a suit in the High Court of Calcutta praying to set aside the assessment to customs duty by the Port Trust authorities and claiming refund of the sum of Rs. 1,34,300. That suit was dismissed by the Calcutta High Court on the 10th of November, 1941, and the contention of the assessee is that on the dismissal of that suit the sum of Rs. 1,34,000 which was a debt due to them by the Port Trust authorities became a bad debt. Now a bad debt presupposes the existence of a debt and in our opinion at no time there was a debt due by the Port Trust authorities to the assessee. At the highest the assessee has a claim against the

Port Trust authorities. They paid the amount under protest, their contention being that they were not liable to pay duty at the rate claimed by the Port Trust authorities. Once the High Court of Calcutta decided that the Port Trust authorities were entitled to claim at the rate at which they claimed, then the payment made by the assessee became the payment of duty legally recoverable by the Port Trust authorities. It is contended by Sir Jamshedji Kanga that when Ishardas paid this amount he did not debit it to the profit and loss account but kept it in the suspense account and it was carried forward in the suspense account from year to year till 1941 and therefore it was only in 1941 when the adjudication was given by the Calcutta High Court that the amount became debitable to the profit and loss account. We are not really concerned with the method according to which the assessee keeps his books of account or what view he took of this particular payment. It may be that the assessee took an optimistic view of the situation and expected to succeed either in his representation made to the Governor-General in Council or in his litigation in the Calcutta High Court; but the ultimate decision leaves no doubt that what was paid in 1934 was a proper payment of duty and it was properly debitable to the profit and loss account as an expense in 1934. It cannot be called a debt which became a bad debt in 1941. Therefore we must answer the question in the negative.

The assessee must pay the costs of the reference.

Reference answered in the negative.