

Commissioner of Income-Tax, Madras

Vs

V. MR. P. Firm, Muar

Civil Appeals Nos. 55, 888 and 889 of 1962 and 518 to 520, 722, 724, 725, 727 to 729 & 732 to 735 of 1963

(K. Subha Rao, J.C. Shah, S.M. Sikri JJ)

26.10.1964

JUDGMENT

SUBBA RAO, J. –

These 16 appeals are filed against the judgment of the High Court of Judicature at Madras and raise the question of the effect of the Debtor and Creditor (Occupation Period) Ordinance No. XLII of 1948 of Malaya, hereinafter called the Ordinance, on the liability of the assessee to pay income-tax in respect of pre-occupation debts revised thereunder.

During the last World War Japan occupied Malaya. During the period of their occupancy, i.e., from February, 1942, to September, 1945, they introduced their own currency in dollars. During that period both the currencies were in vogue though there was a progressive depreciation of Japanese Currency in its relation to Malayan currency. On September 5, 1945, the British Government re-occupied Malaya and introduced the Malayan Currency as legal tender in place of Japanese currency. The Indian nationals, who were carrying on business in Malaya during the period of Japanese occupation, were hit adversely and suffered losses. The Government of India came to their rescue and by Notification dated August 14, 1947, they propounded a scheme to give them relief by allowing them to set off the losses incurred by them during the 5 years relevant to the assessment years 1942-43 to 1946-47 against the profits of the assessment years 1942-43 and 1941-42. We shall consider the scheme in come detail at a later stage of the judgment. On December 16, 1948, the Malayan legislature passed the Ordinance declaring that payments made in Japanese currency by debtors to their creditors in respect of debts incurred prior to and during the Japanese occupation were to be valued and scaled down in accordance with the Schedule appended to the Ordinance. We Shall deal with the Ordinance in some detail at the appropriate place but the broad effect of the Ordinance was that though a debt had been discharged fully by paying the amounts due in Japanese currency, the debt was revived in proportion to the depreciation of Japanese currency in relation to the Malayan currency as laid down by the Schedule. The creditor's right to recover the debtor to pay the same revived.

As the question raised is one of law and does not depend upon the peculiar facts of each case, we think it is enough if we state briefly the facts of two cases, one illustrating the claim of an assessee against the imposition of income-tax in respect of the income by realized by the revival of the debts and the other illustrating that of an assessee to an allowance on the ground that he paid the scaled down debts over again.

The respondent in Civil Appeals Nos. 722 to 735 of 1963 is a firm carrying on business of money-

lending Kampar in Federated Malay States. It applied for relief under the special scheme. It incurred loss for the aforesaid years of Rs. 1,33,125. For the years 1941-42 and 1942-43 it had a profit of Rs. 53,010 and Rs. 35,753 respectively. The said profits were set off against the losses and the taxes paid by it for the years 1941-42 and 1942-43 were refunded to it. After the Ordinance was passed, in terms of that Ordinance the respondent recovered 6,437 dollars during the previous year ending April 12, 1952, corresponding to the assessment year 1952-53.

Civil Appeals Nos. 518 to 520 of 1963 deal with the converse case. The appellant therein is a Hindu undivided family carrying on, inter alia, a money-lending business in its own villasam in Kaula Kubbu Bharu and Parit Buntar in the Federated Malay States. In the course of its business it had taken moneys as deposits from various persons before April 12, 1942. During the period of occupation it discharged its liability to various creditors but after the publication of the Ordinance it had to pay again to the creditors 6,214.58 dollars in the previous year ending April 12, 1950; 28,586 dollars for the previous year ending April 2, 1951; and 11,547 dollars for the previous year ending April 12, 1952. The aforesaid amounts were claimed by the appellant as deductions respectively for the assessment years 1950-51, 1951-52 and 1952-53.

The following tabular form on page at a glance gives the claims of the assesseees as creditors or debtors, as the case may be :

#-----	Civil Appeal R.C. No.	Appellant
Respondent	Assessment	Claim Issue for No. year determin- tion-----
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-----722 to 735 .. 33 of 1955	Comm. of I.T. O.R.M.SP.SV. 1951-52 \$57395.69	Creditor of 1963 Madras. Firm. claims & that the 55 of receipt 1962 .. .. is capital and not revenue. 52 of 1955 " V.MR. P. 1951-52 \$39,851 " Firm, Muar 58 of 1955 " VP. 1951-52 \$9889 " AL. CT. Chidambaram Chettiar. 59 of 1955 " S. SV. 1952-53 \$6437 " Firm, Kampar 60 of 1955 " M.RM. SP. 1951-52 \$7667 " V. Venkata-chalam Chettiar 64 of 1955 " RM. P. 1951-52 \$35500 " Alagappa Chettiar. 65 of 1955 " M. RM. SP. 1951-52 \$9006 " SM. Swaminathan Chettiar. 97 of 1956 " M/s. A. L. 1951-52 \$8388 " A. Firm 98 of 1956 " AR. M. M. 1950-52 \$6770 " Firm 102 of 1956 " S.M.RM. Meyyappa 1950-51 \$1119 " Chettiar & Sons. 1951-52 \$3214 " 112 of 1956 " AR. M. M. 1953-54 \$2445 " Firm (Penang) AR. M. M. Arunachalam. 113 of 1956 " P.S.R.M. 1951-52 \$12004 " Annamalai Subramaniam Chettiar. 115 of 1956 " M/s. L.AR. 1951-52 \$1979.62 " Firm 518 to 520 .. 43 of 1956 O.V.R. SV. Commiss- 1951-52 \$28,586 Debtor of 1963 AP. Aruna- oner of claims chalam Income- tax, deduc- Chettiar Madras. 1952-53 \$11,574 tion on account of these payments. 888 & 520 .. 90 of 1955 Commissioner O.R.M.O.M. 1951-52 \$6,746 Creditor of Income A.M. Chida- & claims Tax, Madras. mbaram, that the Chettiar. receipt 1952-53 \$664 is capital and not revenue.-----
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The Income-tax Officers held that during the period of Japanese occupation the debts were discharged and that the receipt of additional amounts under the Ordinance was in fact assessable to tax. They also held that in the case of an assessee who was a debtor no deduction was permissible on the ground that the amounts paid represented only repayment of capital and not business expenditure. On appeal the Appellate Assistant Court Commissioner held that the receipts by the assessee in respect of the revived debts were only realization of the original amounts lent and, therefore, could not be regarded as income. In the case of the claim for deduction he agreed with the view of the Income-tax Officer. On further appeal to the Tribunal, in the case of receipts it held that the assessee by claiming benefits under the scheme and in including all its cash and Bank balances in the Malayan business as part of the losses incurred therein in effect indirectly wrote off the debts

to them and, therefore, the recoveries under the Ordinance were only a subsequent realization of the written off bad debts and, therefore assessable to income-tax. In those appeals relating to deductions, the Tribunal confirmed the order of the Appellate Assistant Commissioner.

The High Court answered the question referred to it as follows :

(1) Where an assessee has received repayments, he will not be liable to tax respect of amounts he has received as or towards principle, but he will be so liable in respect of moneys which he has received as or towards interest. Where only part of the debt is has been recovered, the assessee will be at liberty, subject to the law relating to appropriation of payments, to appropriate the money he has received either towards principle or interest. The assessment in respect of such receipts will proceed on this basis, that is to say, if the payment has been lawfully appropriated towards interest, the assessee will be liable to pay tax thereon. But if he has lawfully appropriated it towards principle, he will not be liable to pay tax on it.

(2) Where an assessee has made payments, he will be entitled to deduct them from his income and claim exemption from tax for only such amounts as he has paid on account of interest. He will not be entitled to deduct any payments on account of principal.

The Tribunal was directed to review the assessment in the light of the said directions. The main reason given by the High Court for giving the said answers was that the result of the Ordinance was to revive the old debts and the question of the eligibility of the said income to tax can only be decided on the provisions of the Income-tax Act and not by the terms of the scheme of the Ordinance. Hence the appeals.

The learned Solicitor-General, appearing for the Revenue, raised before us the following three points : (1) Sub-Section (2) of section 4 of the Ordinance on which reliance was placed by the High Court applies only to pre-occupation capital debts and the debts with which the appeals are concerned are not pre-occupation capital debts and, therefore, they are not revived thereunder. (2) The assessee having taken benefit under the scheme propounded by the Government of India which contained a condition that if any recoveries subsequently made would be taken as income, they are now precluded from contending that the amounts realized towards the revived debts are not taxable on the principle of approbate and reprobate. And (3) on reasonable construction of the relevant sections of the Ordinance it should be held that there was no revival of the debts but only that the State had provided for compensation for the losses incurred during the occupation period by the assesseees.

The first question had not raised at any stage of the proceedings before the Tribunal and the High Court. Nor does it find a place in the statement of case. We cannot, therefore, allow the learned Counsel to raise it for the first time before us.

or has the second question been raised in the High Court in the form in Which it is presented before us. The scheme propounded by the Government of India, inter alia, contains the following provisions :

(i) No assessee was under any obligation to accept the scheme. If he desired to opt for the scheme he was required to give option within one month after he was

informed of the scheme.

(ii) An assessee was permitted to include in his expenses certain items which would be inadmissible under the Indian Income-tax Act.

(iii) The losses suffered by an assessee during the five years relevant to the assessment years 1942-43 to 1946-47 were to be aggregated.

(iv) An assessee was permitted to carry the aggregated loss backward and set it off against his profits for the assessment year 1942-43.

(v) Any loss still unabsorbed could be carried backward to the year 1941-42.

(vi) Any excess tax found to have been paid after recomputing the income of an assessee by carrying his loss backward could be refunded to him.

(vii) The loss could not be carried forward.

The Central Board of Revenue issued further instructions on the above scheme by its letter dated December 1, 1947. One of the instructions was that debts due to the assessee if paid in Japanese currency would be taken to have been satisfied to that extent and excluded from the assets side in the balance sheet, provided that if any recovery was subsequently made, it was to be taken as income. Briefly stated, under the scheme the losses suffered by an assessee during the assessment years 1942-43 to 1946-47 were set off against his profits for the assessment years 1942-43 and 1941-42 and any unabsorbed loss could not be carried forward. The debts discharged in Japanese currency were excluded from the assets side in the balance sheet but the authority reserved for itself the right to treat any recoveries sub-sequently made as income. The contention is that the assessee having opted to accept the scheme, derived benefit thereunder, and agreed to have their discharged debts excluded from the assets side in the balance sheet subject to the condition that subsequent recoveries by them would be taxable income, they are now precluded, on the principle of "approbate and reprobate", from pleading that the income they derived subsequently by realization of the revived debts is not taxable income. The doctrine of "approbate and reprobate" is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provision of a statute. If a particular income is not taxable under the Income-tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either eligible to tax under the taxing statute or it is not. If it not, the Income-tax Officer has no power to impose tax on the said income.

The decision in *Amarendra Narayan Roy v. Commissioner of Income-tax, West Bengal* (A.I.R. 1954 Cal. 271) has on bearing on the question raised before us. There the concessional scheme tempted the assessee to disclose voluntarily all his concealed income and he agreed to pay the proper tax upon it. The agreement there related to the quantification of taxable income but in the present case what is sought to be taxed is not a taxable income. The assessee in such a case can certainly raise the plea that his income is not taxable under the Act. We, therefore, reject this plea.

To appreciate the third argument it is necessary to notice the relevant terms of the Ordinance. The Ordinance was issued by the Malayan Government to regulate the relationship between the debtor and creditor in respect of debts incurred prior to and during the period of the enemy occupation of the territories comprising the Federation of Malaya. The relevant section of the Ordinance read :

#### Section 4. Discharge during occupation period of preoccupation debts :

(1) Subject to the provisions of Sub-sections (2) of this section, where any payment was made during the occupation period in Malayan currency or occupation currency by debtor or by his agent or by the Custodian or a Liquidation Officer purporting to act on behalf of such debtor, to a creditor, or to his agent or the Custodian or a Liquidation Officer purporting to act on behalf of such creditor, and such payment shall be a valid discharge of such pre-occupation debt to the extent of the face value of such payment.

(2) In any case -

(a) Where the acceptance of such payment in occupation currency was caused by duress or coercion; or

(b) where such payment was made after the thirty-first day of December, 1943, in occupation currency in respect of a pre-occupation capital debt, exceeding two hundred and fifty dollars in amount, which -

(i) was not due at the time of such payment; or

(ii) if due, was not demanded by the creditor or by his agent on his behalf and was not payable within the occupation period under a time essence contract;

(iii) if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or agent and the debtor or his agent; or

(c) .... Such payment shall be revalued in accordance with the scale set out in Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation.

#### THE SCHEDULE

1. (a) : Where any such payment as it mentioned in sub-section (2) of section 4 of this Ordinance was made in occupation currency during any month or on any day mentioned in the first column of the scale set out in paragraph 3 of this Schedule, such payments shall be revalued by taking the numbers of dollars in occupation currency set out opposite such month or day in the second column of the said scale as equivalent to one hundred dollars, Malayan currency, and so in proportion for any proportion of such payment amounting, when revalued, to less than one hundred dollars Malayan currency.

(b) Where any such payment was made in occupation currency on or after the thirteenth day of August, 1945, the value of such payment shall be taken to be nil.

2. (a) : In the case of an unsatisfied occupation debt or part thereof which falls to be revalued under section 6 of the Ordinance such debt or part thereof shall be revalued at the appropriate date as provided in the said section or sub-section by taking the number of dollars in occupation currency mentioned opposite such month or day in

the second column of the scale set out in paragraph 3 of this Schedule as equivalent to one hundred dollars, Malayan currency, and so in proportion for any portion of such debt amounting, when revalued, to less than one hundred dollars, Malayan currency.

(b) When any such debt or part of a debt fell due for payment on or after the thirteenth day of August, 1945, its value shall be taken to be nil.

### 3. Sliding scale of the value of occupation currency 1942 - 45.

We have not allowed the Solicitor-General to contend that sub-section (2) of section 4 of Ordinance does not apply to the debts in question as throughout the proceedings of this case it was assumed that it applies to the said debts. During the Japanese Occupation both the Japanese currency and the Malayan currency were in vogue. In January, 1943 the Japanese currency began to depreciate and by August 13, 1945, it ceased to be of any value. During that process of devaluation debts were paid off and received in Japanese currency which resulted in loss to the creditors. To regulate the relationship between creditors and debtors during that period the said Ordinance was passed by the Malayan Legislature on December 16, 1948. Under the said Ordinance payments in Japanese currency were to be valued and scaled down in accordance with the Schedule appended to the Ordinance. If a debtor was paid his debt in depreciated Japanese currency, he was required to pay over again a certain amount to be ascertained by the application of the provisions of the Schedule. In terms sub-section (2) says that the payment in Japanese currency shall be a valid discharge of such debt only to the extent of such revaluation. When the payments made towards debts were scaled down, the debts were revived in regard to the balance of the debt. After the making of the Ordinance, the creditor could enforce his debt to the extent not discharged and the debtor had the obligation to discharge the same. On the express terms of the Ordinance it is impossible to accept the contention that the state Provided for compensation for the losses incurred by the assesseees. Indeed the State did not pay any compensation at all. The legal relationship of the creditor and debtor was not created by the Ordinance but is was regulated on the basis of the pre-existing relationship. We, therefore, hold, agreeing with the High Court, that under the ordinance the discharged debts became enforceable to the extent of the balance of the amount due after the scaling down of the payments. If so, the Income-tax Officer could only impose tax on the income recovered by the assesseees thereafter toward their debts it such income was taxable under the provisions of the Act.

So too, in regard to the payments made by the assessee towards such debts, they could claim relief by way of deductions only if such deductions were permissible under the Act.

The High Court held that the assessee who had received repayments would not be liable to tax in respect of amounts they had received towards principal but they would be so liable in respect of moneys which they had received towards interest. It further held that those assesseees who had made payments towards the debts would be entitled to deduct from their income and claim exemption from tax only such amounts as they had paid on accounts of interest but they would not be entitled to deduct any payment made on account of principal. The High Court also gave a direction that in the case of open payments the respective amounts paid towards principal or interest should be ascertained in accordance with the law of appropriation of payments. Neither the learned Solicitor-

General, who appeared for the revenue, nor the learned counsel, who appeared for the assessee, questioned the correctness of the said directions if the construction we placed on the Ordinance was correct. The directions given by the High Court will, therefore stand. In our view, the High Court gave correct answers to the questions referred to it.

In the result the appeals are dismissed with costs. One hearing fee.

Appeals dismissed.

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