

Commissioner of Income-Tax, U. P.

Vs

Nainital Bank Ltd.

Civil Appeals Nos. 601 and 602 of 1965

(J. C. Shah, V. Ramaswami – I, V. Bhargava JJ)

15.09.1966

JUDGMENT

SHAH, J. -

The National Bank Ltd. has its head office at Nainital and a branch at Ramnagar. Currency notes of the value of Rs. 1,06,000 and a large quantity of jewellery pledged with the bank by its constituents were stolen by dacoits on June 11, 1951, from the premises of the bank. The bank claimed in its return for the assessment year 1952-53 the loss of currency notes as a permissible deduction. The departmental authorities disallowed the claim. But the claim was allowed by the High Court of Allahabad and that order was confirmed by this court : see Commissioner of Income-tax v. Nainital bank Ltd.

In regard to the loss of jewellery the bank settled the claims of the constituents who had pledged their jewellery. The terms of settlement were these : when the market value of the jewellery pledged exceeded the amount advanced, the difference was paid by the bank to the constituent : when the market value of the jewellery was less than the amount advanced, difference was recovered from the constituent. Under the adjustments made in this manner, in the year 1952 the bank made a total payment of Rs. 48,891 and the year 1953 the bank paid Rs. 1,21,760. In its returns for the assessment years 1953-54 and 1954-55 the bank claimed, in computing its taxable income, the accounts so paid to the constituents. The Income-tax Officer disallowed the claims and the order was confirmed in appeal to the Appellate Assistant Commissioner. An appeal to the Income-tax Appellate Tribunal was also unsuccessful.

The Tribunal submitted a statement of the case and referred the following question to the High Court of Allahabad for opinion :

"Whether on a true interpretation of section 10(1), section 10(2) (xi) and section 10(2) (xv) of the Indian Income-tax Act, the claims for the losses of Rs. 48,891 and Rs. 1,21,760 were permissible in the assessment years 1953-54 and 1954-55 respectively ?" Before the High Court the claim for deduction under section 10(2) (xi) was abandoned by the bank and the High Court negatived the claim of the bank for deduction of the amount under section 10(1). But the High Court held that, having regard to the true nature of the settlements made to the constituents, the amounts credited as the value of jewellery against the claim of the constituents for amount advanced to them must be regarded as expenditure within the meaning of section 10(2) (xv) and, since such credit was given by the bank in the interest of its business, the amounts paid were liable to be deducted in computing the taxable

income. The Commissioner of Income-tax has appealed with certificate granted by the high Court under section 66A(2) of the Inc

In these appeals counsel for the Commissioner raised two contentions : that by writings off either partially or wholly the amounts due from its constituents in its books of account the bank did not expend or lay out expenditure within the meaning of section 10(2) (xv); and that, in any event, the expenditure was not laid out wholly and exclusively for the purposes of the business of the bank. In its normal meaning, the expression "expenditure" denotes "spending" or "paying out or away", i.e., somethings that goes out of the coffers of the assessee. A mere liability to satisfy an obligation by an assessee is undoubtedly not "expenditure" : it is only when he satisfies the obligation by delivery of case property or by settlement of accounts, there is expenditure. But expenditure does not necessarily involve actual delivery of or parting with money or property. If there are cross-claims - one by the assessee against a stranger and the other by the stranger against the assessee - and as a result of accounting th

Counsel for the Commissioner submitted that when the bank advanced a loan to its constituent, it incurred expenditure and when the bank failed to recover under an arrangement with the constituent the amount due to it, there was merely an act of forbearance to enforce the demand and such an act of forbearance was not expenditure within the meaning of section 10(2) (xv). Mere forbearance realize a claim, it may be accepted, is not expenditure within the meaning of the Act; but we are not called upon to consider whether the advances made by the bank to its constituents may in certain circumstances constitute expenditure. Nor can it be said that there was by the settlements mere forbearance to recover the amount. The settlements made by the bank with its constituents were in their nature bilateral : each constitute admitted his liability to repay the amount which had been advanced to him, and the bank admitted liability to pay to the constituent the value of the jewellery pledged with it. When the bank paid to t

It was urged by the Commissioner that the bank was under no legal liability to pay to the constituents the value of the jewellery pledged. It was said that the bank was, as a pledgee, a bailee of the jewellery and was in law required to take as much care of the pledged jewellery as a person of ordinary prudence would take under similar circumstances of his own jewellery of the same bulk, quantity and value, and the bank having provided an adequate number of watchmen, it was not liable for the loss of the property pledged. Granting that, on proof that it had taken as much care of the jewellery pledged with it as it would have taken if it belonged to it, the bank could enforce its rights and recover the full amount due from the constituents, the question still remains whether in admitting liability for the purpose of the business. The sole question is whether the bank in incurring the expenditure acted in the interest of and for the purpose of its business. The bank is carrying on banking business and advances

We hold accordingly that the settlements with the constituents and the consequent posting of entries in the books of account cannot be the loans advanced. The settlement consists of two constituent elements - paying by the bank of the value of the jewellery pledged with it against receipt from the constituent the amount which was recoverable by the bank. There first element of the transaction would appropriately be deemed expenditure and such expenditure having been laid our for protecting and furthering the business of the bank was properly admissible under section 10(2) (xv) of the Income-tax Act, 1922.

The appeals therefore fail and are dismissed with costs. There will be one hearing fee.

Appeals dismissed.

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