

M/s. Amarchand Sobhachand

Vs

The Commissioner of Income-Tax, Madras

Civil Appeal No. 949 of 1966

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

21.01.1971

JUDGMENT

HEGDE, J. -

The appellant firm (which will hereinafter be referred to as the "assessee") carried on business in drugs, chemicals, mercury, camphor and art silk yarn as also in money-lending, over a number of years. The accounting year with which we are concerned in this appeal is Samvat year 2008 commencing from October 31, 1951 and ending on October 18, 1952. The firm consisted of two parents, Mohanlal Bagmal and Seshmal Sobhachand. Two minors, Ramaniklal Sobhachand and Lakshmichand Sobhachand were admitted to the benefits of the partnership. The assessee had dealings for several years with a firm known as "Bhojaji Sobhachand" (to be hereinafter referred to as the Bombay firm). Sobhachand Amarchand, a partner of the Bombay firm, is the father of Seshmal, Ramaniklal and Lakshmichand and he was having sixteen per cent. share in the Bombay firm. That firm became insolvent in April, 1952. The Bombay firm owed certain amount to the assessee. In the assessment of income-tax of the appellant for the assessment year 1952-53, relevant to the account year Samvat 2008, the assessee claimed a deduction of Rs. 2,68,385/- as bad debt due from the Bombay firm, incurred by that firm in the course of business transactions. The Income-tax Officer disallowed that claim holding that "these transactions were mere accommodations which can have no bearing to the regular business carried only the assessee. In appeal the Appellate Assistant Commissioner agreed with the Income-tax Officer. He held that the debt did not arise in the course of the assessee's business as Chemists and Druggists nor in the course of their money-lending business. On a further appeal taken by the assessee to the Income-tax Appellate Tribunal, the Tribunal confirmed the order the Appellate Assistant Commissioner. The assessee thereafter applied to the under Section 66(1) of the Indian Income-tax Act, 1922 to submit a statement of the case with the question "whether on the facts and in the circumstances of the case the disallowance of the bad debt of Rs. 2,68,385/- is right in law" to the High Court of Madras for its opinion. The Tribunal rejected that application but pursuant to an order of the High Court under Section 66(2), the Tribunal submitted a statement of the case on the following question :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the debt of Rs. 2,68,385/- was not one incurred in the course of money-lending business of the assessee ?"

The High Court opined that the debt in question was not a bad and doubtful debt in the assessee's money-lending business nor a debt representing loss sustained in the other business. The question referred was, therefore, answered in the affirmative and against the assessee. Thereafter the present appeal was brought after obtaining special leave from this Court. At the hearing of the appeal this

Court found that the Tribunal's order was very brief and that it gave no reasons in support of its conclusions. It also found that the statement submitted by the Tribunal was inadequate. This Court took the view that the question framed at the instance of the High Court did not bring out the real question arising for decision. It accordingly reframed the question as follows :

"Whether on the facts and in the circumstances of the case the Appellate Tribunal erred in disallowing a sum of Rs. 2,68,385/- written off by the assessee in their books of accounts as irrecoverable ?"

By its order, dated July 29, 1969, this Court called upon the Tribunal to submit a supplementary statement of case on the reframed question. The Tribunal accordingly submitted a fresh statement of the case on the question referred. But that statement merely catalogued the arguments advanced at the bar. The Tribunal did not give any findings on the points arising for decision. Hence by its order, dated April 7, 1970, this Court directed the Tribunal to submit a further statement. The Tribunal has accordingly submitted a further statement.

2. The facts found by the Tribunal are found in Paragraphs 11 and 12 of the statement. They read :

"11. We have taken into consideration the available materials and the rival submissions. The only facts in favour of the assessee are that incidental charges are debited to the Bombay firm in respect of some of the remittances and there is flow of moneys to the Bombay firm up to 10-3-1952 when the last of the remittances was sent to it before the first collapsed in about April, 1952. On the other hand, the narrations in the entries, as they stand, the failure to adjust interest in the account of the Bombay firm at the state at which it became a debtor in Samvat year 2007, the manner in which the partner of the appellant-firm tried to explain the position in March 1954 and the stand of the firm itself at all earlier stages support the case of the Department.

12. Having considered all the circumstances of the case, we are of the opinion that the sums in question were not sent to the Bombay firm as loans made in the ordinary course of the money-lending business of the assessee nor in respect of any other business of the assessee. As this is the finding with the regard to the whole of the amount of Rs. 2,68,385/-, there is no question of allocating any portion thereof as between the business of money-lending or for any other purpose as preferred to Para 7 above."

3. It is true as contended by the learned Counsel for the assessee that the conclusions reached by the Tribunal are not supported by proper discussion of the material before it. It is also true that the Tribunal after cataloguing the arguments advanced at the bar, has come to certain abrupt conclusions, but all the same it cannot be denied that the findings reached by the Tribunal are findings of fact and those findings are supported by the evidence on record. The Tribunal has found that the monies sent by the assessee to the Bombay firm were not loans made in the ordinary course of its money-lending business, nor in respect of any other business of the assessee. This finding covers the entire amount sought to be deducted. In view of this finding, which is binding on this Court, our answer to the question reframed has to be in the negative and in favour of the Department. The appeal fails and is dismissed. No costs.

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