

Pandit Narain Dutt Chhimwal

Vs

Commissioner of Income-Tax, U. P.

Civil Appeal No. 1629 of 1967

(K.S. Hegde, A.N. Grover JJ)

03.08.1971

JUDGMENT

GROVER J. -

This is an appeal by special leave from a judgment of the Allahabad high Court arising out of an Income-tax reference relating to the assessment year 1949-50.

The assessee, at the material time, was an undivided Hindu family carrying on money-lending business. In the course of that business the assessee lent Rs. 40,000 to one Sri Kishan and his brother in September, 1930. The transaction was one of simple mortgage of immovable properties and the interest was payable according to the terms of the mortgage. In September, 1933, the assessee purchased a portion of the mortgaged property for Rs. 35,000. Out of this amount a sum of Rs. 3,000 was adjusted against the mortgagor's share of the loss in a firm which was payable to the assessee. The balance of Rs. 32,000 was adjusted against the mortgage debt leaving a sum of Rs. 8,000 outstanding on the mortgage. Between the date of mortgage in September, 1930, and the date of sale three years later, the mortgagors had effected further encumbrances on the properties which were the subject-matter of mortgage. The assessee had to pay Rs. 17,800 to the mesne encumbrancers. In October, 1946, the assessee obtained a decree for Rs. 25,000 against the mortgagors to be realized by the sale of that portion of the mortgaged properties which had not been sold to the assessee in 1933. Even after the sale the entire amount was not realised and the shortfall including the costs came to Rs. 4,758-15-0. The assessee claimed this amount as a bad debt which was allowed in a previous assessment. In 1948 the assessee sold half the area of the land purchased by him in 1933 for Rs. 93,313. This sale was effected by means of a public auction after dividing the area sold into certain number of plots.

The Income-tax Officer held that the property purchased by the assessee in 1933 was stock-in-trade of his money-lending business and the excess amount realised by the assessee over the cost was business income. A net gain of Rs. 36,303 was assessed by him with regard to the aforesaid sale. On appeal the appellate Assistant Commissioner differed with the method of calculation adopted by the Income-tax Officer and made the necessary modification. On further appeal the Appellate Tribunal Worked out the profits at Rs. 52,313. As regards the main question whether the assessee had not converted the properties purchased into a capital asset and that the same had ceased to be a trading asset the conclusion of the Tribunal was that the assessee considered the aforesaid asset as a part of his money-lending business. The decision having gone against the assessee the following question was sought to be referred and was duly referred by the Tribunal to the High Court :

"Whether the sum of Rs. 52,313, realized in excess by the assessee on the sale of the

property in the circumstances narrated above, constitute the profits and gains of the business of money-lending carried on by the assessee ?"

The High Court took into consideration the circumstance which had been adverted to by the Tribunal. One of the prominent circumstances was that the assessee had paid the sum of Rs. 17,800 to the puisne mortgagees in order to safeguard the title to the properties acquired by the assessee in 1933. That amount had been debited by the assessee to the money-lending account. It was pointed out that no satisfactory explanation had been furnished by the assessee why this sum of Rs. 17,800 had been debited to the money-lending account when it was claimed that the properties purchased formed part of the capital asset of the assessee.

It has been urged before us on behalf of the assessee that the Tribunal had overlooked the fact that the property purchased by the assessee was not treated as the assessee's stock-in-trade, the cost having been debited to the capital account. Moreover, no part of the income arising from the property which had been purchased or the expenditure incurred on its maintenance, improvement or repairs had ever been credited or debited to the revenue account of the assessee's money-lending business and that the income derived from such property had been assessed to income-tax under section 9 of the Income-tax Act, 1922. The debit of the sum of Rs. 17,800 to the account of the mortgagor was in order according to the principles of accountancy, for the sum had to be debited to the account of the mortgagor in relation to the original mortgage debt. It does not appear from the order of the Tribunal that all these matters were pressed before it. What seems to have been urged is that the assessee had incurred expenses on the grove which was included in the property purchased by him and that he had derived income, which, being agricultural, was no chargeable to income-tax and that these facts showed that the investment was of a capital nature. The Tribunal based its decision mainly on two facts : the first was that the assessee had claimed and obtained an allowance as a bad debt of the sum of Rs. 4,763 mentioned before and the payment of a sum of Rs. 17,000 and add to the mesne encumbrancers had been shown as a debit in the money-lending account. This is what the Tribunal proceeded to observe :

"It is impossible now to allocate the sum of Rs. 4,763, written off as a bad debt between the various items which went up to make the total of Rs. 29,000 and odd due to the assessee and in respect of which he was able to secure a decree only for Rs. 25,000. There can be no doubt, however, that at least some part of this bad debt related to monies laid out in connection with the property purchased by the assessee in 1933. That is enough to stamp that acquisition which was, as already said, in the course of the assessee's money-lending business, as continuing to retain its character as a business asset and stock-in-trade of money-lending business, almost right up-to the date when half the area of the property so purchased was sold by the assessee at a profit in 1948."

We are unable to find any infirmity in the reasoning or the conclusion of the Tribunal on the facts that were presented to it which would have justified the High Court taking a different view. In the result this appeal fails and is dismissed with costs.

Appeal dismissed.

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