Poonjabhai Vanmalidas

Vs

Commissioner of Income-Tax, Ahmedabad

Civil Appeals Nos. 1431 To 1433 of 1976

(Dr. T. K. Thommen, R. M. Sahai JJ)

09.10.1990

JUDGMENT

DR. T. K. THOMMEN J. –

These appeals under certificate arise from the common judgment of the High Court of Gujarat in CIT v. Poonjabhai Vanmalidas [1976] 105 ITR 388. The assessee is the same in all the cases. The assessment years in question are 1964-65, 1965-66 and 1967- 68. In the relevant previous years, the assessee received certain amounts and they were assessed under section 41(4) of the Income-tax Act, 1961 (hereinafter referred to as the "1961 Act"). The contention of the assessee was that he was not assessable under section 41(4) of the 1961 Act because these amounts had been written off as bad debts in the year 1959-60 and his claim for deduction, though initially disallowed by the Income-tax Officer, was subsequently allowed by the Income-tax Appellate Tribunal in I. T. A. Nos. 673-676 (Ahd.) dated July 12, 1963. The business of the assessee was discontinued prior to the previous year in which any part of the amount was received and, consequently, it was contended that these amounts, when received, were not assessable to income-tax under section 41(4) of the 1961 Act as that section was not in pari materia with section 10(2)(xi) of the Income-tax Act, 1922 ("1922 Act") in terms of which the amounts had been written off as bad debts. This contention was rejected by the Income-tax Officer and the amounts were brought to tax. The orders of assessment were confirmed by the Appellate Assistant Commissioner. On further appeal by the assessee, the Tribunal held, accepting the assessee's contention, that the amounts could not be taxed under section 41(4) of the 1961 Act, for that section had no application to amounts written off in 1959-60 in terms of section 10(2)(xi) of the 1922 Act when it was in force. On a reference, the High court held that the amounts in question were includible in computing the taxable income of the assessee in respect of the relevant years under section 41(4) of the 1961 Act. The questions referred were, accordingly, answered by the High Court against the assessee and in favour of the Revenue. Hence, the present appeals.

Section 10(2)(xi) of the 1922 Act reads : "10. Busines :-(1)....

> (2) such profits or gains shall be computed after making the following allowances, namely :-.....
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> (xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-landing business, such sum in respect of loans made in the ordinary course of such business

as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered and if less, the deficiency shall be deemed to be a business expense of that year;..."

There is no dispute that the assessee's accounts were not kept on cash basis. There is also no dispute that the assessee's business was discontinued prior to the year recovery of the amounts in question. If the amounts had been received prior to the repeal of the 1922 Act, the entire transaction would have been covered by the provisions of section 10(2)(xi) of that Act, and the business having been discontinued prior to the relevant years of receipt, these amounts would not have been taxable. See CIT v. Express Newspapers Ltd., [1964] 53 ITR 250 (SC). But the amounts in question here were recovered after the coming into force of the 1961 Act which repealed the 1922 Act. The question, therefore, is whether the amounts which had been written off in terms of section 10(2)(xi) of the 1922 Act, but subsequently received after the repeal of that provision, could be brought to tax in terms of the relevant re-enacted provisions. Tax is sought to be levied under the 1961 Act in terms of section 41(4) which reads :

"41. Profits chargeable to tax. -....

(4) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (vii) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income-tax as the income of the previous years in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not..."

This sub-section refers to the deduction allowed in respect of a bad debt under the provisions of section 36(1)(vii) of the 1961 Act which reads as follows :

"36. Other deductions. - (1). The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28. -...

(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year :..."

Significantly, sub-section (4) of section 41 of the 1961 Act specifically states that tax is attracted whether or not the business or profession in respect of which the deductions had been allowed continued to be in existence in the year of receipt. This is a fundamental deviation from the earlier provision contained in section 10(2)(xi) of the 1922 Act. Furthermore, sub-section (4) of section 41 specifically says that the deductions should have brrn allowed in respect of a bad debt unde the provisions of section 36(1)(vii) in order to attract section 41(4).

The assessee, therefore, contends that the relevant provisions of the two enactments are not in pari

materia and what has been allowed as a deduction in terms of section 10(2)(xi) of the 1922 Act cannot be brought to tax under section 41(4) of the 1961 Act. Any order made under section 10(2)(xi) of the 1922 Act under which a debt was written off would not attract tax on recovery of the whole or part of such amount unless the business itself continued to exist at the time of the recovery. Furthermore, the assessee contends that sub-section (4) of section 41 of the 1961 Act is attracted only where the bad debt was written off in terms of section 36(1)(vii) of that Act, and not in terms of section 10(2)(xi) of the 1922 Act the provisions of which are not in pari materia with either section 36(1)(vii) or section 41(4).

Rejecting the contentions of the assessee, the High Court held that there was no inconsistency between the relevant provisions of the two enactments and that section 24 of the General Clauses Act, 1897, was attracted as a result of which the order passed under section 10(2)(xi) in terms of which the amounts had been written off was deemed to have been made under the re-enacted provisions, as contained in section 36(1)(vii) and, consequently, the amounts recovered on any such debt were charge able under section 41(4).

Section 24 of the General Clauses Act, 1897, in so far as it is material, reads :

> "24. Continuation of orders, etc., issued under enactments repealed and re-enacted. - Where any Central Act or Regulation is after the commencement of this Act, repealed and re-enacted with or without modification, then unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re- enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted..."

The effect of section 24 of the General Clauses Act, 1897, in so far as it is material, is that where the repealed and re-enacted provisions are not inconsistent with each other, any order made under the repealed provisions is deemed to be an order made under the re- enacted provisons. The question, therefore, is whether the provisions of the repealed section 10(2)(xi) under which the bad debts were written off as irrecoverable in the books of the assessee are, in terms, re-enacted by the repealling Act. A comparative table furnished in The Law and Practice of Income-Tax by Kanga and Palkhiwala (Seventh Edition, Volume II) shows that section 10(2)(xi) of the 1922 Act is equivalent to section 36(1)(vii), 36(2) and 41(4) of the 1961 Act. The repealed section 10(2)(xi) is thus a composite section containing the ingredients of the re-enacted sections 36(1)(vii), 36(2) and 41(4). Consequently, when a debt is written off by an order in terms of section 10(2)(xi) of the 1922 Act, the Income-tax Officer exercises the same power as he would have exercised on the enactment of section 36(1)(vii) of the 1961 Act. These two provisions are, therefore, consistent with each other. Section 36(1)(vii) is subject to the provisions of sub-section (2) of that section. Therefore, both sections 36(1)(vii) and 36(2) of the 1961 Act, being two of the ingredients of section 10(2)(xi) of the 1922 Act, must be read together with reference to an order under which debts had been written off. Accordingly, in the light of Section 24 of the General Clauses Act, 1897, the relevant order made under section 10(2)(xi) of the 1922 Act with reference to which the debt in question had been written off, is deemed to be an order made under section 36(1)(vii) of the 1961 Act and such order is what is contemplated under Section 41(4) of that Act. Any amount which is recovered on any such debt attracts by the provisions of Section 41(4) of the 1961 Act and is, therefore, chargeable to tax in terms of that sub-section to the extent of the "excess" specified therein.

The contentions of the assessee thus fail and the appeals are, accordingly, dismissed. No order as to costs.

Appeals dismissed.

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