

Badal Ram Laxmi Narain

Vs

C.I.T., Lucknow

Civil Appeals Nos. 657 of 1979 and 2117-21 of 1977

(K. Jagannatha Shetty, Yogeshwar Dayal JJ)

12.07.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. The common question which arises for decision in these appeals by special leave is whether the interest paid on a debit balance of Rupees 1,75,310/- taken over by the assessee firm from the erstwhile Hindu Undivided Family (HUF), would be an allowable deduction under S. 36(1)(iii) of the Income-tax Act, 1922. . . ,

2. The partners of the firm were members of the HUF which carried on business at Varanasi in the name of M/s. Badal Ram Laxmi Narain. The family had no capital of its own and had been running business with the help of borrowed money. On 20 October 1951, there was partial partition in the family. As a result whereof the business of the family was partitioned between the members of the family. The members formed themselves into partnership and continued the same business. On the date of partition, there was a debit balance of Rs. 1,75,310/- in the capital account of the family. This debit balance transferred in equal proportion to the personal accounts of the three partners of the firm. The newly formed firm took over the business assets as well as liabilities of the HUF. The question arose as to whether the interest paid by the firm on the said debit balance was an allowable deduction in the computation of its income? One of the contentions urged for the firm was that the debit balance was taken over by the firm in consideration of the goodwill of the business. The Appellate Assistant Commissioner has held that the HUF business had no goodwill. The Tribunal did not agree with the Appellate Assistant Commissioner. It has observed that the business of the HUF was of a very long standing and the previous years returns and assessment of income prior to the date of partition indicated that the HUF had flourishing business. Since the running business was taken over by the assessee with the debit balance, the Tribunal expressed the view that the firm could be deemed to have taken the liability of Rs. 1,75,310/- in consideration of the sale of goodwill and the interest paid thereon was an allowable deduction.

3. The following question of law was referred to the High Court.

"Whether on the facts and in the circumstances of the case, the assessee was entitled to the deduction of interest on a debit balance of Rs. 1,75,310/- taken over from the erstwhile Hindu Undivided Family?"

4. The High Court examined the facts of the case to find out whether there was any sale of the

goodwill. It observed that the goodwill of the HUF business was never sold or purchased. Had there been any such transaction, appropriate entries in the books of account of the HUF would have been made. The HUF should have credited the amount in its account in respect of the price paid for the goodwill and since there were no such entries, there could not be any inference that the firm has taken over the liability of Rs. 1,75,310/- for the sale of goodwill. The High Court also has observed that the partners of the firm were bound to take over the liability of the HUF because the liability was that of the family of which they were members and on partition every member became liable to discharge the debt according to his share.

5. Clause (iii) of S. 36(1) applies only where capital has been borrowed for the purposes of the business or profession. The amount of interest paid on the borrowed capital is an allowable deduction. It is not in dispute and indeed cannot be disputed that if the goodwill is purchased out of the borrowed capital, the interest paid on the borrowed capital is an allowable deduction. The Tribunal has correlated the debit balance to the purchase of goodwill since the firm has taken over the running business. The High Court has held that there was no sale of goodwill by the HUF to the firm in view of the absence of related entries in the books of account of HUF. The conclusion of the High Court seems to be as much an inference as that of the Tribunal on the same set of facts and circumstances. It is important to point out that there was only a partial partition in the family, particularly with regard to HUF business. It was not necessary for the firm to have taken over the debit balance of the HUF since the HUF had other properties. The conclusion of the Tribunal that the firm has taken over the debit balance of Rs. 1,75,310/- in consideration of the sale of the goodwill, in the premises, stands to reason. Indeed it seems to be neither unreasonable or unwarranted, nor arbitrary or unjust. The High Court ought not to interfere with such conclusion even if another view is possible.

6. The second reason given by the High Court is also not acceptable. We are concerned with the rights of the assessee and not the liability of the individual members of the HUF. The claim of the assessee for allowable deduction of the interest paid cannot be defeated by the existence of personal liability of the members of the HUF. That is wholly beside the point. We are, therefore, unable to sustain the order of the High Court

7. In the result, the appeals are allowed and the decision of the High Court is set aside. The question referred to the High Court in each case is answered in favour of the assessee and against the revenue.

8. The assessee shall be entitled to one set of costs in this Court.

Appeals allowed.

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