BOMBAY HIGH COURT

Vissonji Sons And Co

Vs

Commissioner of Income-Tax

(Beaumont, C.J.)

23.09.1943

JUDGMENT

Beaumont, C.J.

1. This is a reference made by the Income-tax Tribunal under Section 66(1) of the Income-tax Act. The question referred to the Court is : "Whether in the circumstances of the case it was rightly held that the sum of Rs. 7,20,000 let off by the appellants in the scheme of reconstruction of the Acme Manufacturing Co., Ltd., was not money advanced in the ordinary course of their money-lending business; and that, therefore, it could not be claimed as bad debt under Section 10(2)(xi) of the Income-tax Act ?" It will be noticed that the question is limited in its character. It is only the Tribunal were right in finding that this Rs. 7,20,000 was not advanced in the ordinary course of the appellants money-lending business. If we told that the Tribunal were wrong in that finding and that the sum was lent in the ordinary course of business it would follow from the facts found, to which I will refer in a moment, that further question would arise, weather the cancellation of the debt was in the ordinary course of business and, if so, whether it took place during the year of assessment. However, those questions have not been referred to us. The question referred to us appears on its face to be one of fact; whether the sum advanced was in the ordinary course of business, and the only question of law that arises is weather there was evidence to justify the finding.The facts are stated in the judgment of the Tribunal and are summarised, and in two respects corrected, in the case submitted to this Court. The assessee firm are Vissonji Sons & Co., who carry on money-lending business, and it would appear that another firm, Mathuradas Vissonji & Co., Ltd., became managing agents of the Acme Manufacturing Co., Ltd., in 1920, having taken agency from another firm called J. Gordhandas & Co., and from July, 1923, the partners in Vissonji Sons & Co., that is, the assessee, and in Mathuradas Vissonji & Co., have been the same persons. In law a firm has no existence independently of its partners, and if there are two firms consisting of exactly the same partners, the real position in law is that there is only firm. It may carry on separate business, and may carry on those business in different names but in fact there is only one firm in law. I think there is a certain amount of confusion, if I may say so, in the case arising from the failure to appreciate that at the material dates, there was

in law only one firm. This is a finding of fact that the company owed the managing agents a large amount of money, and that the sum of Rs. 7,20,000 was voluntarily given up by them in the scheme of reconstruction of the Acme Manufacturing Co., Ltd. Well, that seems to be a finding that this loan was really owned by the firm in respect of its managing agency business, and not in respect of its money-lending business, and that is really vital. It is then found that on this loan no interest was charged and that no other advance was made by the assessee in the ordinary course of their money-lending business in similar circumstances. It is then found that the Acme Manufacturing Co., Ltd., being in difficulties, was reconstructed, I gather, in the year of assessment, though that is not found. As part of the scheme of reconstruction the managing agency firm, which at the time was the same in law as the assessee, gave up this debt of Rs. 7,20,000. The partners in the firm were entitled to the great bulk, indeed 96 per cent., of the shares in the company. Whether the partners were entitled to the shares in the same proportion as they were entitled to the shares in the firm seems to me irrelevant. The Tribunal have further found that the result of the cancelling of this debt of Rs. 7,20,000 was to enhance the value of the shares in the company, and therefore, to benefit the owners of the debt in their capacity as shareholders. There cannot, I think, be any question that there was ample evidence to justify these findings. We do not know the circumstances in which the advance of Rs. 7,20,000 was made originally but on the findings of fact, to which I have referred, it seems to me that it was treated as a loan by the managing agents, and in my opinion, there is ample evidence to justify the finding of the Tribunal that this advance was not made in the ordinary course of the assessees money-lending business. The circumstances, that no interest was charged upon the loan, and that it was given up in order to facilitate carrying out the reconstruction scheme, are entirely against the view that it was an advance made in the ordinary course of money-lending business. To my mind, the only question of law that arises is whether there was any evidence to justify the finding of fact by the Tribunal, and I can only answer that by saying that there was ample evidence.I think, therefore, we must answer the question raised in the affirmative. The assessees to pay costs.

Chagla, J.

I agree. Reference answered in the affirmative.