

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Bombay Samachar Ltd

(Kotwal, C.J. V Desai , J.)

30.06.1969

JUDGMENT

V.S. Desai, J.

1. The following question, which has been raised on this reference under section 66 (2) of the Indian Income-tax Act, 1922, arises out of the assessments of the assessee for the assessment years 1953-54 to 1956-57 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest paid by the assessee-company on its borrowing during the assessment years 1953-54 to 1956-57 was an admissible deduction under the Indian Income-tax Act ?"

2. The assessee is carrying on business as publishers of a Gujarati newspaper called "Bombay Samachar". Two other concerns, viz., M/s. Bombay Chronicle Pvt. Ltd., which was publishing a paper called "Bombay Chronicle" and M/s. Bombay Associated Newspapers Ltd., which was publishing a newspaper called the "Bombay Sentinel", were sister concerns of the assessee. In the year 1939, it was considered desirable by these three concerns to incur certain items of common expenditure jointly and allocate the same among themselves in an agreed manner. Accordingly, the board of directors of each of the three concerns passed appropriate resolutions resolving that expenditure on certain items incurred by any one or the other of the three companies should be allocated at the end of every year in proportion to the amount of revenue earned by them from sales and subscriptions during the respective years. Another such resolution was passed in the year 1940 adding to the items of common expenditure. This arrangement was carried on for a number of years and accounts were made and expenditure at the end of each year was allocated to the respective parties. In the years with which we are concerned, viz., the calendar years 1952, 1953, 1954 and 1955, in the accounts of the assessee debit balances were shown with the Bombay Chronicle Pvt. Ltd. The closing balance at the end of the year 1952 was Rs. 2,47,225; at the end of the year 1953 it was Rs. 1,88,851 and at the end of the subsequent

years it was Rs. 2,85,375 and Rs. 2,78,026 respectively but no interest was charged by the assessee on the aforesaid debit balance. In these years the assessee had paid interest on borrowed capital to outsiders. One of these creditors was Cama Norton & Co., which was composed of persons interested as shareholders in the assessee company. This company had discharged the loans which had been borrowed earlier by the assessee from various parties against securities and for which pressure was brought upon the assessee for repayment of the loans. The total amount of interest paid in the years with which we are concerned is as follows :

Calendar year	Amount
	Rs.
1952	25,109-3-0
1953	22,243-0-0
1954	22,139-0-0
1955	11,791-13-0

3. In its assessment for these years the assessee claimed as deduction the amount of interest which it had paid on the said borrowed capital. The Income-tax Officer took the view that, since the assessee had charged no interest on the balances which were due to it from the Bombay Chronicle Pvt. Ltd., to the extent to which the said interest was not charged, it would not be allowed any deduction out of the amount of interest paid to its creditors. According to the Income-tax Officer, the amounts due from the Bombay Chronicle Pvt. Ltd. to the assessee were in respect of the loans advanced by the assessee to the Bombay Chronicle Pvt. Ltd. and there was no reason why the assessee should have advanced the said loans without interest when it was itself paid to outsiders to that extent cannot be allowed to the assessee. Accordingly, for the assessment years 1953-54 and 1954-55 he disallowed the assessee an amount of Rs. 12,000 each year out of the amount of interest claimed after reduction. For the assessment year 1955-56 he found that, apart from the balance which was due from the Bombay Chronicle Pvt. Ltd., there was another amount of Rs. 5,25,811 which was due to it from M/s. Cama Norton & Co. in another account on which also no interest had been charged by the assessee. Since the amount of interest which the assessee would have got, if he had charged interest on these amounts, far exceeded the amount of interest paid by it to outsiders in this year the Income-tax Officer disallowed the entire amount of interest claimed by the assessee as a deduction. For the next year also the amount of Rs. 11,791-13-0 claimed by the assessee was disallowed by the Income-tax Officer on the ground that the amount of interest which had not been charged to the Bombay Chronicle Pvt. Ltd. exceeded the said amount. The Appellate Assistant Commissioner in the appeals preferred by the assessee confirmed the orders of the Income-tax Officer. He took the view that the balance due from the Bombay Chronicle Pvt. Ltd. to the assessee was in respect of the advance of loans which had been made by the assessee to the Bombay Chronicle Pvt. Ltd.

and to the extent of these loans the assessee for its business would not, therefore, be allowable under section 10 (2) (iii). The assessee went in second appeal to the Tribunal against the appellate orders of the Appellate Assistant Commissioner. The Tribunal held that the assessee was entitled to the entire amount of interest as an allowable deduction under section 10 (2) (iii). It accordingly set aside the orders passed by the departmental authorities and allowed the assessee's appeals.

4. In our opinion the view taken by the Tribunal is correct and must be upheld. From the facts which have been already stated, it will be clear that the balance due from the Bombay Chronicle Pvt. Ltd. was not in respect of any loans advanced by the assessee to it, as considered by the Income-tax Officer and the Appellate Assistant Commissioner. The said balance was respect of the common account between the parties in connection with the expenditure in relation to the business agreed to be incurred in common and allocated in shares at the end of the year. Similarly the amount due from Messrs. Cama Norton & Co., in the calendar year 1954, did not constitute any loan advanced by the assessee to Messrs. Cama Norton & Co., but constituted the outstandings in connection with certain business transactions. The capital borrowed by the assessee from outsiders on the other hand was admittedly used by the assessee for the purpose of its business and it was also undisputed that no part of the borrowed capital had been utilised for the purpose of advancing loans either to Messrs. Bombay Chronicle Pvt. Ltd. or to Messrs. Cama Norton & Co. In these circumstances, it is difficult to see how the assessee's claim for the interest actually paid by it could be disallowed. In *Calico Dyeing & Printing Works v. Commissioner of Income-tax* it has been observed :

"Where the assessee claims deduction of interest paid on capital borrowed under section 10 (2) (iii) of the Income-tax Act, all that the assessee has to show is that the capital which was borrowed was used for the purposes of the business of the assessee in the relevant year of account. It does not matter whether the capital is borrowed in order to acquire a revenue asset or a capital asset. If the capital is used in the year of account and the use is for the purpose of the business of the assessee, it is immaterial whether the user of the capital actually yielded profit or not and it is not open to the department to reject the claim of the assessee in respect of the interest paid on that capital merely because the use of the capital is unremunerative."

5. As we have already pointed out, it is undisputed that the amounts borrowed from outsiders on which interest has been paid have been used for the purpose of the business of the assessee. It appears to have been the view of the Income-tax Officer that if the assessee had collected the outstanding which were due to it from others, it would have been able to reduce its indebtedness and thus save a part of the interest which it had to pay on its own borrowing its outstandings to remain without charging any interest thereon while it was paying interest on the amounts borrowed by it. To the extent, therefore, to which it would have been in a position to collect

interest on the outstandings due to it from others, it could not be permitted to claim interest paid by it outsiders. In our Opinion the view taken by the Income-tax Officer is clearly unsustainable. As has been pointed out by the Madhya Pradesh High Court in Ram Kishan Oil Mills v. Commissioner of Income-tax the only conditions required to be satisfied in order to enable the assessee to claim a deduction in respect of the interest under section 10 (2) (iii) are, firstly, that money must have been borrowed by the assessee; secondly, it must have been borrowed for the purpose of business and, thirdly, the assessee must have paid interest on the said amount and claimed it as a deduction. It is not the requirement of the provision that the assessee must further show that the borrowing of the capital was necessary for the business so that if at the time of borrowing the assessee had sufficient amount of its own, the deduction could not be allowed. Similarly, the Madras High Court in Amna Bai Hajee Issa v. Commissioner of Income-tax has held that in deciding whether a claim for interest on borrowing can be allowed the fact that the assessee had ample resources at its disposal and need not have borrowed, is not a relevant matter for consideration. The matter to be decided is whether the amount of interest was paid in fact in respect of the capital borrowed for business.

6. The view taken by the Income-tax Officer, therefore, that the assessee could have decreased the extent of its borrowings by collecting its outstandings and, therefore, would not be entitled to claim interest paid by it on borrowed capital is not capable of being sustained. The Appellate Assistant Commissioner's view that the assessee had diverted the capital borrowed by it for making advances to the Bombay Chronicle Pvt. Ltd. or to Messrs. Cama Norton & Co. is clearly wrong on the facts of the case. The ground on which the Appellate Assistant Commissioner has disallowed the claim, therefore, is not capable of being sustained.

7. In the result, therefore, the answer to the question raised on the present reference is in the affirmative. The commissioner will pay the costs of the assessee.

8. Question answered in the affirmative.

