

PATNA HIGH COURT

Darbhanga

Vs

Commissioner of Income-Tax

(Manohar Lall, J.)

22.09.1943

JUDGMENT

Manohar Lall, J.

1. This is a reference by the Commissioner of Income-tax under Section 66(2) of the Indian Income-tax Act, 1922, for the opinion of the Court on the two questions :

(1) Whether, in the circumstances of the case, the assessee was entitled to claim for the purpose of 1938-39 assessment the loss of about Rs. 17,000 incurred during the previous year (i.e., the accounting year in question) in the Kajora Colliery business ?

(2) Whether in the circumstances of the case, the assessee was entitled to deduct from his total income the following losses claimed as bad debt for the purpose of 1938-39 assessment -

Rs.

(a) Sheodutt Rai Badri Das 3,246

(b) Mulchand Badri Narayan 13,352 It will be convenient to state the facts regarding each of the questions separately.

Kajora Colliery. - During the previous year ending 30th of September, 1937, the assessee was in possession of this Colliery and in working it he suffered a loss of about Rs. 17,000. In February 1938 the Colliery was sold by the assessee as a going concern to one Bankim Chandra Dutt. The Commissioner gives the date as February 1938, but Mr. P. R. Das who appears for the assessee give as 3rd June, 1938, as the date apparently based on the statements made by the Assistant Commissioner on page 4 where he states that "the assessee produced before me the sale deed which is dated 3rd June 1938 transferring all rights and title and interest in the Colliery to Bankim Chandra Dutt." The assessee claims that this loss which he incurred in the previous year

should be set off against his profits under the other heads as provided under Section 24, sub-clause (1). The Income-tax Department, on the other hand, contends that by reason of Section 26 (2) as it stood at the time of the assessment it is only Bankim Chandra Dutt who can be allowed to set off this loss against his assessable income against his profits, if any.

Mr P. R. Das contends in the first place that as the assessee during the whole of the previous year was admittedly in possession of the Colliery he alone was entitled to set off the loss as provided by Section 24(1). He submits that the opening words in Section 26(1) "at the time of making an assessment under Section 23" must be interpreted to related to the period covered by the previous year. I am unable to agree with this contention. The identical question was decided by this Court in the case of Maharajadhiraja of Darbhanga v. Commissioner of Income-tax. In that case a notice to submit return for the previous year was served upon the late Maharajadhiraja of Darbhanga who was succeeded after the close of the previous year in the business by his son, the assessee. The assessee's contention was that he could not be assessed by the operation of Section 26(2) because he never succeeded to the business of his father in the previous year. The learned Chief Justice interpreted the very words "at the time of making an assessment under Section 23" as follows on page 8 :

"Section 23 is the only section under which an assessment can be made, and, therefore, the real meaning of the words where at the time of making an assessment under Section 23 merely mean when the time comes to make an assessment." This decision was affirmed by their Lordships of the Judicial Committee in the case of Maharajadhiraja of Darbhanga v. Commissioner of Income-tax, Bihar and Orissa. Lord Tomlin who delivered the judgment of their Lordships observed on page 613 that the words "at the time of making the assessment" mean in the course of the process of assessment. Accordingly I overrule the first contention Mr. P. R. Das then argued that Section 26 (2) is not a section computation and that the computation is allowed to be made only in the manner provided by Section 24 (1). There are conflicting decisions in the Indian High Courts on the applicability of Section 26(2) as a section which deals with computation, but it is needless to investigate as to the correctness of those decisions because the question has now been set at rest by the decision of their Lordships of the Judicial Committee in the case of Indian Iron & Steel Co. Ltd. v. Commissioner of Income-tax, Bengal, where a decision of the Calcutta High Court was affirmed. Lord Porter, who delivered the judgment of their Lordships, was considering the rule of construction to be placed on Section 26 (2) and Section 10 under which unabsorbed depreciation allowance was claimed by the succeeding company. Their Lordships first decided that the word "assessee" must be read distributively as meaning the owner of the property for the time being, i.e., the assessee or his predecessor, as the case may be, and then observed on page 336 :-

"Their Lordships are not prepared to assent to the argument that it follows as a consequence that the unabsorbed depreciation allowance of the predecessor must be added to that of the successor or to agree that even in a case when the only business concerned is that which is transferred, the business when transferred carried to the purchaser its unabsorbed allowance. Indian Income-tax is assessed and paid in the next succeeding year upon the results of the year before. If then Company A sold its business to Company B in the first of the two years, apart from the provisions of Section 26 (2), the former company could not be assessed and would not be liable for any profits it then made, because it would not be carrying on the business in the next year for which in the normal course the assessment would be made and in respect of which tax would be due, nor would Company B be liable except for any period during which it had itself owned the business and made profits, because the tax under Section 10(1) is only payable by an assessee under the head business in respect of the profits or gains of any business carried on by him.

To meet this contingency, whether in the case of a company or an individually owned business, Section 26 was passed, and it is concerned not with the computation of tax, but with the person upon whom the liability is imposed. When, but not until, the person to pay has been ascertained do the terms of Section 10 become material in order to discover how the amount to be paid is to be computed."

It may also be pointed out that Section 26(2) distinctly provides that the assessment shall be made on the successor as if he had been carrying the business throughout the previous year and as if he received the whole of the profits of that year. The words to be noticed are as if he had received the whole of the profits of that year." It does not say "as if he had suffered the loss of that year." For these reasons I would accept the contention of the assessee and hold that he is entitled to claim this loss.

I would accordingly answer the first question in the affirmative.

Question No. (2). - The assessee's father, the late Maharajadhiraja Sir Rameshwar Singh (referred to in the statement of the Commissioner as the Maharaja) had entered into an agreement with one Kunwar Ganesh Singh to do some business by a registered deed dated the 4th August, 1921, in which the Maharaja was styled as the principal and the Kunwar as the agent. They agreed to open a "Guddi" or a firm in the name of Sadashiv Vishwanath for the doing ready and forward transactions in gunnies, hessians, linseed, jute, sugar, rice etc., and also for dealing in stocks and shares. In accordance with the agreement the business went on for some time and in the course of the business the firm acquired the Kajora Colliery, some investments, e.g., shares, promotes, handnotes, bills receivable, decrees etc., and some debts including the two whose debts will be

considered now. Later on when the firm was closed all the assets were taken over by the Maharaja and the assessee succeeded to the business of his father including these assets.

(a) Sheodutt Rai Badri Das was one of the customers of the firm of Sadashiva Vishwanath who owned a debt in the form of a bill which was assigned by Kunwar Ganesh Singh to the assessee on the 30th April 1925. The assessee filed a suit and obtained a decree on the 25th of November, 1927, and in execution of that decree, in which he incurred Rs. 434 as costs he sold the house of the debtor for only Rs. 105 on the 18th July, 1936, because there was a previous encumbrance of about Rs. 6,000. The sale was confirmed on the 18th of August, 1936. The Assistant Commissioner truly finds that the date of confirmation of sale is the deciding date on which a decree would be considered to be realized for the purpose of income-tax and this eventually occurred in the previous year. But he disallowed the loss as in his opinion it was a capital loss. The Commissioner of Income-tax takes the same view. In my opinion the contention of the assessee must be accepted. The loss in the circumstances stated above cannot be considered to be otherwise than as a business loss. The Maharaja entered into money-lending business by advancing Rs. 32,00,000 to Kunwar Ganesh Singh. That business fell into bad ways and the business was wound up, the Maharaja taking over all the assets of the business including the debts due from the customers to Kunwar Ganesh Singh who was the agent of the business. The Commissioner in his statement regarding Sheodutt Rai Badri Dass appears to have confused the facts because he states on page 27 that "certain security belonging to the debtor, namely some shares in certain Joint Stock Companies, was also taken over by the assessee in satisfaction of the debt". But the order of the Assistant Commissioner is clear and it is admitted that the facts are as stated by him and that no shares were taken by the assessee in this case.

(b) Mulchand Badri Narayan owned the value of the goods supplied to them by Kunwar Ganesh Singh as the agent of the firm Sadashiva Vishwanath on the security of certain shares pledged by the debtor. These shares, which were assigned to Kunwar Ganesh Singh, were assigned by him to the assessee on the 30th of April, 1925. Some of the shares were sold for a sum of Rs. 254 during the year 1344 F. The remaining shares could not be sold because they were of the Company or Companies which had gone into liquidation. The assessee thus suffered a loss of Rs. 13,232 which he wrote off as a bad debt in the year of assessment. Upon these facts it must be found that the loss was a business loss and not a capital loss. For these reasons I would answer question No. (2) in the affirmative. As the assessee has succeeded he is entitled to his costs. I would assess the hearing fee at Rs. 250 and would direct the Commissioner to refund the sum of Rs. 100 deposited by the assessee as the cost of the reference.

Chatterji, J.

I Agree.

Reference answered accordingly.

