

PATNA HIGH COURT

Hanutram Bhuramal

Vs

Commissioner of Income-Tax

(Ramaswami, J.)

31.01.1938

JUDGMENT

Ramaswami, J

1. This is the statement of a case by the Commissioner of Income-tax in the matter of an assessment made upon a joint family in respect of a business carried on by them. The material facts may be very shortly stated. The family are the descendants of one Chaturbhauj who left two sons. The eldest son left three sons the eldest of whom was one Nemchand. From the younger son was descended one Bhuramal who had, in turn, two sons Sohan Lal and Puranchand. During the year of assessment Nemchand dropped out of the family business and became separate from the other members and ceased to have anything to do with the business. The remaining members continued to carry on the family business. A great deal of discussion has taken place before us as to whether the business terminated or not. The phrase discontinuance of business is apt to be used in an ambiguous sense. Business may change hands; a partner may cease to be a partner, the business being carried on by his co-partners; but such events do not constitute a discontinuance of the business in the sense meant in Section 25 of the Income-tax Act. Such events are merely a change in the ownership of the business. The finding of fact concerning which there can be no dispute was that on the disappearance of Nemchand the business continued in the hands of the other members of the family. Now, the first question of the Commissioner which we have to answer is whether in the circumstances of this case that assessment was rightly made on the basis of a Hindu undivided family. This question in part depends upon whether the business was the same business after as before the elimination of Nemchand or whether it was a different business, and that is a question of fact which was decided by the Assistant Commissioner and it is submitted by the commissioner to have been so decided as a question of fact and the Commissioner rightly contends that it is merely a question of fact. But even in the circumstances the matter is not open now, whether it be a question of fact or a question of law, because the point was not raised before the Assistant Commissioner. The proper answer, in my opinion to the direct question whether in the circumstances of this case the assessment was rightly made on the basis of a Hindu undivided

family should be in the affirmative. As a matter of fact, under proper construction of the Act the present members of the family are really liable for the whole of the year under assessment in respect of the tax payable for that year; but the department has charged them, very reasonable only with the tax for the period after disappearance of Nemchand. With this question however, we are not concerned. The second question submitted to us relates simply to one item of the accounts. It would seem that some few years ago one Nasiruddin Ahmad became indebted to the assessee's business in respect of a sum of Rs. 1,663. The account being kept on the mercantile system, this debt has been brought forward from year to year and has been treated as an asset bearing interest and income tax has been charged upon it. In respect of the year previous to the year of assessment it was so treated. The department, however, says that whereas an attempt has now been made in respect of the year of assessment to wipe off the debt as bad and irrecoverable it should have been written off and treated as bad and irrecoverable in the previous year of assessment when it was in fact treated by the department as a still subsisting debt and as an item concerning the profits of the business it was treated as true, good and subsisting. It is rightly contended by the assessee that such treatment is inconsistent. After all the department should treat a continuing business with a continuing and consistent system of treatment of items of account and the principles which are applicable to such an item of account and such a method of treatment of accounts in a consistent manner are explained in the case of *Bansidhar v. Commissioner of Income-tax Bihar and Orissa* (I.L.R. 13 Patna 101), the remarks at page 105 being the passage applicable. In my opinion the second question which is whether the debt due from Nasiruddin Ahmed of Rs. 1,663 is an admissible deduction in the year of assessment should be answered in the affirmative. This concludes the matters with which we have to deal. The assessee has been successful in respect of a minor question and has been unsuccessful of the main question. We, therefore, deem it right to order that the assessee shall pay to the department two thirds of the costs with which it should otherwise be saddled and as the nearest approximation to this order we direct that he pay to the department the sum of six gold mohours. Order accordingly.