

INCOME-TAX REFERENCE.

Before Rankin C. J., C. C. Ghose and Buckland JJ.

In re BINJRAJ HUKUMCHAND.*

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Feb. 27 ;
Mar. 6.

Income-tax—Profits of “business” carried on by an assessee—Return of income—Onus of proof of revised return—Statement of case to High Court by Commissioner—Procedure for such reference—Indian Income-tax Act (XI of 1922), ss. 10 (2), 23 (3), 66.

An assessee cannot ask the High Court, upon a reference under section 66 of the Indian Income-tax Act, to examine his books of account, and come to findings of fact contrary to those of the Commissioner, nor can books of account, which were not produced before, be produced at this stage.

Where a return shows profit for the year under assessment and the assessee wants to deduct therefrom a certain sum as a bad debt, the burden lies entirely on him to prove that such debt is irrecoverable.

Rowntree & Company, Limited v. Curtis (1), *Nope Chand Mangniram v. Commissioner of Income-tax, Behar and Orissa* (2) and *Puran Mal v. Commissioner of Income Tax, Punjab* (3), referred to.

An assessee is not allowed to write off debts arbitrarily. There must be good reason for such writing off with reference to the profits of the year under assessment.

Where an item of account had reference to profits and losses arising out of the sale of jute and the debtor had executed a mortgage in favour of the assessee for a settled amount of the debtor's indebtedness,

held that the Income-tax officer was right in refusing to treat such transaction as a loan transaction.

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The Commissioner of Income-tax in his statement of the case, dated the 26th July, 1930, put the following questions to the High Court:—

(a) “In the circumstances, was the Income-tax officer right in disallowing set-off against the profits of the previous year of the unrecovered balance of the debt standing in the name of Tarachand “Singhee?”

(b) “Was he right in disallowing set-off of the unrecovered balance of the debt standing in the name of Kissenchand Tarachand?”

*Income-tax Reference, No. 12 of 1930.

(1) (1924) 8 Tax Cas. 678.

(2) (1925) 2 Ind. Tax Cas. 146.

(3) (1924) 2 Ind. Tax Cas. 236.

(c) "Was he right in disallowing set-off of the "unrecovered balance of the debt standing in the "name of Tarachand Prithwiraj?"

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Other relevant facts are fully stated in the judgment.

S. N. Banerjee (with him *Praphullachandra Chakrabarti*) for the assessees.

Radhabinode Pal for the Income-tax Department.

Cur. adv. vult.

RANKIN C.J. In this case, the assessees, a registered firm, claim that, in computing their profits for the Ramnavami year 1927-28, they are entitled to make a deduction of Rs. 60,999-1 in respect that certain debts owing to them by one Tarachand, son of Kissenchand, became bad to that extent in that year. The Commissioner of Income-tax has proceeded on the footing that it is for the assessees to produce satisfactory evidence: (1) of the nature and character of the debts, (2) that they were really and justly due to the assessee firm and (3) that they became bad in the year of account. He has held, upon the evidence, that the assessees have failed to do this and he has disallowed the deduction claimed. He has referred to us the question "whether the Income-tax officer was right "in disallowing set-off." As under the Income-tax Act (section 66), this Court has to decide question of law only, the form of the question is open to exception. I propose to enquire whether the Income-tax Commissioner was, upon the evidence, obliged, in law, to allow the deduction and whether, if not, he has, in arriving at his decision, departed from or misapplied the principles which in law govern the matter?

The debts alleged to be due from Tarachand are described in a mortgage bond, dated 28th June, 1927, as three in number. The oldest appears to be an account in the name of Kissenchand Tarachand Singhee, in respect of which a mortgage was

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executed in 1902 for Rs. 14,000 and, upon which, in 1927, only Rs. 2,431-0-3 was outstanding. How this debt came to be incurred and what has happened to the mortgage of 1902 are questions upon which no evidence was produced. The mortgage deed is not produced. It appears, from the assessee's books of 1924 (Ramnavami, 1981), that a sum of Rs. 1,472-13 was brought to Tarachand's credit in this account in that year. The second debt is given as an account in the name of Tarachand Singhee for Rs. 6,909-2-6 for "miscellaneous expenses." The dates and particulars of these alleged expenses and the circumstances in which the assessee firm came to be entitled to claim these expenses are not to be found in any books of account or other document produced. The third debt is by far the largest. It is given as Rs. 81,685-14-3 and is described in the mortgage bond as being for "profits and losses arising out of the purchase and sale of jute" and the account is said to stand in the name of Tarachand Prithwiraj Singhee. To the Income-tax authorities an explanation has been given to the effect that the assessee's were formerly partners in a jute business with Tarachand and another, the assessee's having a four annas share; that this business was closed down in 1920 (Ramnavami, 1977), owing to losses, that Tarachand did not pay his share of the losses, which were met by the assessee's and that the sum of Rs. 81,685 was due from him to the assessee's accordingly.

The mortgage bond states that the amounts therein mentioned, *viz.*,

Rs.	A.	P.
6,909	2	6
2,431	0	3
81,658	14	3
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90,999	1	0

were settled and adjusted with Tarachand in 1924 (Ramnavami, 1981), who gave handnotes for each

debt. It describes the sum of Rs. 90,999-1 as being due for principal and interest. It then goes on to effect a "settlement" as follows. The assessee firm gives up all save Rs. 30,000; it is to receive this sum of Rs. 30,000 from Mohanlal, one of the two partners in the assessee firm; Mohanlal takes a mortgage for Rs. 30,000 at six *per cent.* upon Tarachand's interest in certain property in Bikanir.

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The assessee firm produced their books for the years 1923-27 (Ramnavami, 1981-84). The sums claimed are entered as carried forward from the previous year. No payment is recorded. No charge for interest is entered. In 1984, cross entries are made debiting an account Hukumchand Baid Ratangarh (in effect debiting Mohanlal's capital account) crediting Tarachand with Rs. 30,000 and writing off Rs. 60,999-1 as no longer recoverable.

Before the Commissioner of Income-tax and before us it was contended that, as the business of the assessee firm, like many Marwari businesses, includes money-lending, the Income-tax authorities ought to treat these debts as loans made by them to Tarachand in the course of their money-lending business, that as Tarachand (who is said to have died about six months after making the mortgage of 1927) had always acknowledged liability, there was nothing further to be enquired into. I cannot accept this argument. The mortgage bond of 1927 speaks of three debts and the main one is described not as a loan but as an account "for the profits and losses arising out of the "sale of jute." This means an account between partners and the Income-tax authorities have to ask themselves whether, if, in 1927, the assessee firm make a profit of a certain amount in their money-lending business, they can be allowed to say that, because in another business—a jute business with at least four partners—Tarachand since 1920 has owed them money on capital account, this debt can be deducted from the profit of the assessee firm in 1927, assuming that, in 1927, it became a bad debt. To put the

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matter in another way, suppose that, in 1924, Tarachand had paid up his share of losses in the old jute firm with interest at six *per cent.*, could the Income-tax authorities, merely on the materials now disclosed, have insisted on reckoning this as part of the profits of this registered firm's money-lending business? I do not think they could. Of course, if the assessee firm had got out annual balance sheets of their money-lending business and it appeared that, in previous years, the sum spent on Tarachand's account had been brought into the account so that interest thereon, although unpaid, had been treated as outstanding and gone to swell the profits on which income-tax was payable, the case would have been different. But nothing of the sort is shown. From 1923 onwards, no interest was charged even in the assessee's books and if it be true that it was charged in earlier years, this is no sufficient evidence of a loan made to Tarachand by the assessee firm in the course of its money-lending business.

Again, in a case like the present, the assessee cannot be allowed to pick and choose the year in which they will treat a debt as bad. We have been told that a business has been carried on in the name of Binjraj Hukumchand for very many years, that at first it was a joint family business, then a contractual partnership assessed as an unregistered firm, and that it became a registered firm in the year of assessment with which we are concerned. Doubtless, if they may go back for over twenty years, the assessee will be able to trace many debts that are not now recoverable. But they must have solid reason for writing them off against the profit of a particular year. They cannot arbitrarily set them off against a particular year of profit. How then does the case stand from this point of view? The debt was a large one, the bulk of it being due from about 1920, and it was unsecured. From 1923, interest had not even been entered in the account. In 1927, nothing was paid to or by Tarachand. All that happens is that Mohanlal, one of the assessee, takes a mortgage of a certain

property from Tarachand. The mortgage sum is Rs. 30,000. This sum is credited against the debt. Cross entries are made in Mohanlal's account. As proof that the debt became bad, in 1927, this seems to me poor and the Income-tax authorities did well to be suspicious of it.

I cannot discern any error of law in the view taken by the Commissioner. When, as in this case, an assessee produces his books for the year of account and complies with any other requirements as to specific documents, so that he is assessed in the ordinary way under section 23 (3), and not as being in default, the Income-tax authorities cannot assess him upon any figure of profits not warranted by evidence, which they have before them; but where the transactions for the year show a profit of a certain amount and the assessee wants to deduct therefrom a certain sum as a bad debt, I am of opinion that the burden of proof is upon him. If the debt which he claims to set-off is an old debt, still he must prove his claim to set it off. It is clear, on the authorities, that a claim to any of the allowances mentioned in subsection (2) of section 10 of the Act is a claim which the assessee must prove [*Rowntree & Company, Limited v. Curtis* (1), *Nope Chand Mangniram v. Commissioner of Income-Tax, Behar and Orissa* (2)] and the same is true of a claim to deduct a bad debt [*Puran Mal v. Commissioner of Income-tax, Punjab* (3)].

The assessee has, in this case, asked us to receive in evidence certain copies of accounts said to appear in books of account which were not produced to the Income-tax authorities at any stage. They ask us, on the basis of these extracts, to revise the Commissioner's decision upon the facts and to say that we are satisfied that the claim is made out. This shows an utter misconception of the procedure applicable to a reference under section 66 of the Act. It is not open to any assessee to ask this Court, upon

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(1) (1924) 8 Tax Cas. 678, 696.

(2) (1925) 2 Ind. Tax Cas. 146, 152.

(3) (1924) 2 Ind. Tax Cas. 236.

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such a reference, to examine his books of account and come to findings of fact contrary to those arrived at by the Commissioner in the case stated. Still less it is intended that this Court should be a last resort for the production of books which were not produced before any one of the three Income-tax authorities, which had to deal with the case.

The assesseees have suggested before us that they have had insufficient opportunity to produce or insufficient warning as to the need to produce evidence as to the origin of these debts, their nature and character and the fact that they became bad in 1927. The Commissioner has referred no such question to us, and I find, from the assesseees' petition before Commissioner, which they have asked us to look at, that they raised no such question before him. Further, the Commissioner has, at the request of the assesseees, annexed to the case stated a copy of the assessment note and the order sheet of the Income-tax officer. These show that the assesseees have had repeated warning of the necessity for giving proof of the origin of the debts and of the date on which they became bad.

In my opinion, the question propounded to us must be answered in the affirmative and against the assesseees and they must pay the costs of the reference.

GHOSE J. I agree.

BUCKLAND J. I agree.

Advocate for assessee: *Praphullachandra Chakrabarti.*

Advocate for Income-tax Department: *Radha-
binode Pal.*

O. U. A.