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with law. In *Aditya Prasad Singh* v. *Ram Narayan Das*(1), decided by a Special Bench of the Patna High Court, the Chief Justice observed: "I perhaps ought to mention that it is no longer contended that that notice if required by the Code is bad merely on the ground that the seventh execution petition was not in accordance with law". Clearly that objection was abandoned as being indefensible. If I am correct in this, the whole case is thereby concluded aganist the respondents. But the contention that Sheo Prasad's application was not an application in accordance with law should also in my view be rejected, on the authority of *Rajitagiri Pathy* v. *Bhavani Sankaram*(2). I respectfully agree with the whole of my learned brother's reasoning and findings on the question of service of notices in the 1925 execution and as to the effect of such service. I do not propose to discuss these matters in detail because after reading my learned brother's judgment it seems to me there is really nothing more to be said.

Appeal allowed.

REFERENCE UNDER THE INCOME-TAX ACT, 1922.

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October, 11.

Before Courtney Terrell, C. J. and Kulwant Sahay, J.

BANSIDHAR PODDA

v.

COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.*

Income-tax Act, 1922 (*Act XI of* 1922), *sections* 10 *and* 13—*debts, when deemed to have become bad—assessee, if has option of declaring debt bad and choosing year when he will so declare—barred and unbarred debts, if necessarily bad or*

* Miscellaneous Judicial Case no. 59 of 1932.

(1) (1925) I. L. R. 5 Pat. 1, S. B.

(2) (1924) I. L. R. 47 Mad. 641.

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good respectively—procedure adopted by Commissioner in starting enquiry after asked to state a case, whether justified.

In claiming a deduction of bad debts from the income of a business, the assessee has no option of declaring debts to be bad or of choosing the time when he will declare them to be bad.

A time-barred debt is not necessarily bad, and mere limitation is no guide to the point of time at which such a debt became bad. Similarly an unbarred debt is not necessarily good.

Commissioner of Income-tax, Central Provinces v. *Chitnavis*(1), followed.

Where the existing practice of the Income-tax Department, and not an unreasonable practice, was to regard a debt as bad prima facie when it was barred by limitation and no longer recoverable, *held*, that the presumption was rebuttable by evidence according to the circumstances of the case.

Where, therefore, the assessee claimed as a deduction a certain sum which he said had become bad in the year 1985-1986 sambat, the period under assessment, and the finding of the Commissioner was that it had become time-barred in that year, and there was neither any evidence nor any other finding of fact before the High Court to show when the debt became bad and irrecoverable other than the finding that the debt became bad by reason of the fact that it was barred,

Held, that the assessee was entitled to the deduction of the amount claimed.

The procedure adopted by the Commissioner in starting an enquiry after the order of the High Court directing him to state a case deprecated.

Statement of a case made by the Commissioner of Income-tax on an application by the assessee under section 66(*3*) of the Income-tax Act, 1922.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C. J.

(1) (1932) 36 Cal. W. N. 797, P. C.

K. P. Jayaswal (with him *G. P. Das* and *C. S. Jayaswal*), for the assessee.

Manohar Lal, for the Commissioner of Income-tax.

COURTNEY TERRELL, C. J.—This is the statement of a case under section 66, sub-section (*3*), of the Indian Income-tax Act by the Commissioner regarding the assessment upon the assessee.

The facts which have given rise to the assessment and the history of the procedure may be stated thus: The assessee, who appears to carry on a considerable business keeps his account in the mercantile system and, therefore, his income in the year and the allowable deductions from that income are of a notional character and depend upon the state of affairs as properly shown by his books. The period under assessment is the Sambat year 1985-86 and the petitioner claimed as a deduction from his income the sum of Rs. 30,580 as a debt which he said had become bad in that year. A considerable time ago the assessee had advanced a sum of money to one Janki Das and by the Sambat year 1985-86 this had accumulated to the said sum of Rs. 30,580. From the year 1979-80 until the year 1982-83 there were acknowledgments by the debtor Janki Das in the books of the assessee and in each of those four successive years the total amount of the debt up to that date was stated together with interest for that year. The interest was compound interest and, therefore, there was a continuance of the transactions during those years, the amount of interest continually increasing and inasmuch as the interest was of a compound character, the amount of the principal debt continued to increase. After the year 1982-83 no further interest was charged but a special demand charge was entered up in the books. Now, inasmuch as the last acknowledgment by the debtor was in 1982-83, the period of limitation for the recovery of the debt expired in 1985-86. The

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Income-tax Officer, before whom the matter first came, in his report to the Assistant Commissioner stated this fact and made the following statement:—

"The civil law on the matter is that the assessee could not extend the limitation by book debit of interest, nor even by a stamped endorsement if the loan itself had become barred for realisation. In fact the loan had become barred long ago and the assessee cannot put in a claim for deduction of this too old a bad debt (sic) in the accounts of 1985-86. The item is therefore disallowed."

The matter then came before the Assistant Commissioner and he took the same point of view as that adopted by the Income-tax Officer. There was then a petition under sections 33 and 66, sub-section (2), to the Commissioner and the Commissioner refused to state a case before the High Court, but dealt with the matter upon the same basis as that adopted by the Income-tax Officer and by the Assistant Commissioner. He said, moreover, in paragraph 8 of his order in the revision case, that the proper way to deal with the question of whether the debt had become bad was to see whether it was incapable of realisation and when it became incapable of realisation, and he came to the conclusion, in agreement with the Income-tax Officer and the Assistant Commissioner, that the debt had become barred by limitation in the year 1982-83 and not 1985-86. The assessee then came to this Court with a petition praying for an order on the Commissioner to state a case. In the order of this Court the Commissioner was asked to state a case upon three points mentioned by the petitioner in his petition. The points were

I. "When does a debt become a bad debt? Has the assessee the option of declaring debts bad when he finds that from the circumstances of the debtors he is unable to recover them? Can the Income-tax authorities deprive him of this option?

II. Whether the debt due from Messrs. Janki Das Ganpat Rai became barred in the year 1981-82 or 1985-86 Sambat having regard to the fact that the said debtors acknowledged their liability to pay and admitted the correctness of the balance brought forward in the petitioner's account books in the year 1982-83 Sambat.

III. If the debt became legally barred in 1985-86 is the assessee entitled to claim deduction of the said amount of Rs. 30,580 from the income for the year 1985-86 Sambat."

After the receipt of that order the Commissioner proceeded to the statement of the case and he stated that he was of opinion that the date by which the debt became irrecoverable by means of limitation was three years from the date of the last acknowledgment, that is to say, in the year 1985-86; but he correctly appreciated the law which had, since the date of the order of this Court, become manifest in the decision of the Privy Council in the case of *Commissioner of Income-tax, Central Provinces* v. *Chitnavis*(1). He saw that the question for determination as a matter of fact should have been—on what date the debt became bad and not the date on which it became barred by limitation. As was pointed out by their Lordships of the Privy Council, the debt on the one hand may be barred by limitation, but owing to the honesty of the debtor, and possibly his means, hope need not have been abandoned of recovering the debt. On the other hand notwithstanding the debt may not have been barred by limitation, but the circumstances of the debtor may have made the debt quite irrecoverable. He therefore proceeded upon what he has described as a further enquiry by himself and the results of that enquiry are set forth in the last paragraph of his statement of the case.

Now. it is clear that it has been the practice of the Income-tax Office, and one cannot say that it is an unreasonable practice, to regard a debt as bad *prima facie* when it is barred by limitation and no longer recoverable and that appears, as was stated by the Commissioner in his decision in the revision case, as being the guide in the matter. That presumption is, however, rebuttable by evidence according to the circumstances of the case. The Commissioner when stating the case departed from the presumption laid down by his own predecessor and, as I have said, he purported to make an enquiry to see if the debt, whether barred or not barred by limitation, could be

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considered as bad in the year 1985-86. As I have said, the presumption was that inasmuch as it would become barred by limitation in 1985-86 as stated by the Commissioner himself, the question was whether that presumption could be displaced. The finding of the Commissioner is of a peculiar character. As stated by himself he seems to have started with the conclusion that the debt was still recoverable because he refers to the considerable means of the debtor, but in the end he does not seem to be determined in his mind whether the debt was still recoverable or whether it had become bad and recoverable at a period anterior to the period under discussion. He therefore is reduced to stating that the assessee had not succeeded in showing him that the debt became bad in the particular period which was being considered, forgetting that having regard to the general practice the irrecoverability of the debt in the absence of other evidence would be assumed to be when it became barred by limitation. The supposed finding of fact is, therefore, no proper finding at all. Moreover, the assessee has been able to point out, and indeed it is admitted by the department, that for the years during which the acknowledgment by the debtor was given and interest accordingly charged on the books of the assessee, the department actually taxed the assessee in respect of such interest and they therefore themselves treated the debt as being still alive and the income as having been notionally received. The present decision with which we are dealing that the debt became irrecoverable and had ceased to exist as notional liability before the period 1985-86 cannot be justified on any ground of consistency. The procedure adopted by the Commissioner in starting an enquiry after the order of the High Court directing him to state a case is to my mind to be deprecated in this particular case, because it is clearly a hurried enquiry undertaken in order to bring the case within the law as stated by the Privy Council. The assessee was all along under the impression, as was indeed the

Court, that the matter to be dealt with was the state of facts which led up to the appellate order and the materials upon which the appellate order founded the decision. At the last minute to conduct a sudden enquiry, even if that were a legal enquiry, is hardly a procedure in accordance with the principle of fairness to the assessee, nor has the enquiry itself, such as it is, resulted in any further finding of fact which is of assistance in determining the points before us.

The first of the questions which is set forth in the statement of the case is answered by the law as stated by the Privy Council and it is not necessary for us to attempt to re-state the law with any greater clearness. The question as to whether the debt became barred in 1981-82 or 1985-86 has already been answered and answered correctly by the Commissioner himself. It is clear that it did not become barred until three years after the last acknowledgment in 1985-86; and, as to the third question, having regard to the fact with which we have to deal, as stated by the Commissioner, that is to say, whether the debt had become barred in 1985-86 and there being no other finding of fact before us to show when the debt became bad and irrecoverable other than the finding that the debt became bad by reason of the fact that it was barred, it is clear that the assessee is entitled to deduct the amount of Rs. 30,580 from the income of the year 1985-86 Sambat. This expression of opinion covers all the questions which we have been asked to decide. The assessee has succeeded and he will be entitled to receive back Rs. 100 which he deposited with the petition and receive five gold mohurs as hearing fee in addition to the printing cost.

KULWANT SAHAY, J.—I agree.

Order accordingly.