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REHMAT ALI
v.
SMALL TOWN COMMITTEE, DHARIWAL.

JAI LAL J.

learned District Judge. Under the circumstances of this case, I leave the parties to bear their own costs.

A. N. C.

Appeal accepted.

CIVIL REFERENCE.

Before Tek Chand and Monroe JJ.

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Nov. 24.

NARAIN DAS-BHAGWAN DAS (ASSESSEES)
Petitioners
versus
THE COMMISSIONER OF INCOME-TAX
Respondent.

Civil Referenee No. 11 of 1933.

Indian Income-tax Act, XI of 1922, Section 10—Interest — accrued on loans — whether liable to assessment— in absence of proof that it has been realised by the assessee.

Held, that interest which has accrued due to a money-lending firm in the accounting year is not assessable as 'income, profits or gains' of the business, unless it was actually *realised* or *received* in that period. The mere fact that the debtor of an assessee has made an entry in his books showing a credit to the assessee for the amount of interest due in the accounting period does not necessarily mean that the amount had been received or realised by the assessee. In order to justify the assessment there must be a clear finding, based on some evidence, that the amount was received in some form or other by the assessees.

Secretary to the Board of Revenue Income-tax, Madras v. *Arunachalam Chettiar* (1), *Raja Raghunandan Prasad Singh* v. *Commissioner of Income-tax* (2), and *Commissioner of Income-tax* v. *Maharaja Adhiraj of Darbhanga* (3), followed.

(1) (1921) I.L.R. 44 Mad. 65 (F.B.). (2) (1933) I.L.R. 12 Pat. 305 (P.C.). (3) (1933) I. L. R. 12 Pat. 313, 336 (P.C.).

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Case referred under Section 66 (3) of the Indian Income-tax Act by R. B. *Mangat Rai, Commissioner of Income-tax, Punjab, N.-W. F. and Delhi Provinces, with his No. 221-24/33, dated 27th April 1933, for orders of the High Court.*

BADRI DAS and KISHEN DAYAL, for Petitioners.

J. N. AGGARWAL and J. L. KAPUR, for Respondent.

The judgment of the Court was delivered by—

TEK CHAND J.

TEK CHAND J.—We have read the ' statement of the case ' by the Commissioner of Income-tax, Punjab, and the ' opinion ' recorded by him and have also heard counsel at length.

Mr. Jagan Nath Aggarwal, counsel for the Income-tax Commissioner, concedes that apart from the presumption referred to in question No. (2), there is no evidence whatever on the record which would support the finding of the Income-tax Officer that the assessee had an income of Rs. 30,096 on account of interest in the ' previous year.' The answer to the first question will, therefore, depend on the view which we take of the point involved in the second question.

The learned Commissioner, while stating the case, has expressed the opinion that from the ' attitude ' of Joti Parshad and Gajju Mal of the firm of Messrs. Parmeshari Das-Kirpa Ram, the Income-tax Officer was justified in drawing the presumption that the interest must have been credited to the petitioner firm as in the preceding year. Now even if it be assumed that such a presumption could be legally made on the materials before the Assessing Officer, it seems to us that by itself it could not justify the assessment. It is settled law that interest which has accrued due to

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a money-lending firm in the accounting year is not assessable as income, profits or gains of the business, unless it was *realized* or *received* in that period [*Secretary to the Board of Revenue, Income-tax, Madras* v. *Arunachalam Chettiar* (1)]. It is admitted by Mr. Jagan Nath that the mere fact that the debtor of an assessee has made an entry in his books showing a credit to the assessee for the amount of interest due in the accounting period does not necessarily mean that the amount had been received or realized by the assessee. The credit might, for instance, have taken the form of adding the interest to the principal and admitting liability for the aggregate amount due, without anything being actually paid in cash or kind to the creditor. [*cf. Raja Raghunandan Prasad Singh* v. *Commissioner of Income-tax* (2) and *Commissioner of Income-tax* v. *Maharaja Adhiraj of Darbhanga* (3)]. In such a case, the creditor will not be liable to be taxed in the year in which the transaction took place. In order to justify the assessment, therefore, there must be a clear finding based on some evidence that the amount was *received* in some form or the other by the assessee. It is conceded that the Assessing Officer as well as the Commissioner have not pushed to this extent the presumption arising from the so-called ' attitude ' of the assessee. This being so, the assessment is, in our opinion, clearly unsustainable.

We further think, that there is nothing in the ' attitude ' of the assessee firm or any of its partners, which would justify the presumption which has been made against it by the Income-tax authorities. The

(1) (1921) I. L. R. 44 Mad. 65 (F.B.).
(2) (1933) I. L. R. 12 Pat. 305, 312 (P.C.).
(3) (1933) I. L. R. 12 Pat. 313, 336 (P.C.).

Assessing Officer has stated in his order that the assessee firm had complied with the notices served on it under sections 22 (4) and 23 (2) of the Act. A return was duly filed by the firm based on its account-books, which were regularly kept and have not been shown to be incorrect in any way. Along with the return was submitted an audit report by Messrs. P. R. Mehra and Co., Accountants and Government Auditors, showing a net loss of Rs. 935-1-6 suffered during the accounting period. To the report was added a note by the auditors to the following effect:—"No interest was charged this year on the amount advanced by the firm to Messrs. Parmeshri Das-Kirpa Ram on the ground that the debt was doubtful. We are told that the firm has since closed its business and the entire debt (Rs. 5,34,931-8-0) will have to be written off in the current year." The Income-tax Officer has found that the firm of Parmeshri Das-Kirpa Ram ceased to exist during the accounting period. He made no enquiry whatever as to whether the statement in the note that the principal sum advanced by the assessee to the aforesaid firm had itself become a "doubtful debt" was correct or not. The only action which the Income-tax Officer took was that he issued a notice under section 37 to the firm Parmeshari Das-Kirpa Ram asking it to produce its books. It is common ground between the parties that that firm consisted of three partners, Joti Prashad, Parmeshari Das and Gajju Mal. The first two owned a one-fourth share each and were "sleeping partners," while Gajju Mal had a half share and was the working partner, and in the ordinary course the books would be in his possession. It is admitted that at the time that the notice under section 37 was issued the firm had ceased to exist and yet the notice was addressed

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to the defunct firm. It was served on Joti Prashad, who appeared before the Income-tax Officer and stated that he had not got the books of the firm with him but that they were in the possession of the working partner Gajju Mal. No attempt was made to serve a proper notice on Gajju Mal, but Joti Prashad was required to produce him with the books. Joti Prashad brought Gajju Mal with him the next day but he was not examined on oath. Mr. Jagan Nath says that the record merely contains a note by the Income-tax Officer that Gajju Mal had stated that the books were not with him, and that it does not show that any question was put to Gajju Mal as to whether the firm of Parmeshari Das-Kirpa Ram had paid the assessee firm interest on the loan of Rs. 5,34,931-8-0 during the accounting period. Mr. Jagan Nath was constrained to admit that in this state of the record there is no evidence at all to contradict the statement of Joti Prashad that the books of the debtor firm were with Gajju Mal, and in any case the Income-tax Officer had no materials before him which would warrant the presumption that the *assessee* was withholding these books. The learned Commissioner has relied on *C. W. Schulze* v. *S. W. Bensted* (1), but the facts of that case were entirely different. There the assessee had admittedly received the amount in question during the accounting period, but contended that he had received it as a trustee for his deceased brother and not in his own personal account. The documents showing the payment were found to have been in his possession or control at one time, and his failure to produce them clearly raised a presumption against him.

(1) (1922) VIII Tax Cases 259.

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In our opinion there is no evidence, direct or presumptive, on the present record justifying a finding that the assessee firm had received any interest from Parmeshari Das-Kirpa Ram during the accounting period and we answer both the questions in the negative.

The respondent shall pay the assessee the costs of these proceedings. Pleader's fee Rs. 100.

P. S.

Reference answered in negative.

APPELLATE CRIMINAL.

Before Bhide J.

KANSHI RAM AND ANOTHER (CONVICTS) Appellants

versus

THE CROWN—Respondent.

1933

Dec. 1.

Criminal Appeal No. 972 of 1933.

Approver — statement of — corroboration of — retracted confession of co-accused or identification by a witness who failed to identify accused in Court—whether sufficient.

Held, that the omission on the part of a material witness for the prosecution to identify the accused in Court as one who participated in the commission of the crime cannot be treated as a mere immaterial irregularity and the evidence of that witness cannot be accepted as sufficient corroboration of the testimony of an approver.

Lal Singh v. *The Crown* (1), relied upon.

Held also, that a conviction cannot ordinarily be based on the mere uncorroborated testimony of an approver and the testimony of an approver, which is itself tainted, cannot be held to be sufficiently corroborated by a retracted confession of a co-accused.

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(1) (1924) I. L. R. 5 Lah. 396, 400.