

CIVIL REFERENCE.*Before Addison and Sale JJ.***LACHHMI NARAIN GADODIA AND CO.****(ASSEESSEE) Petitioner***versus***COMMISSIONER OF INCOME-TAX, PUNJAB****Respondent.****Civil Reference No. 29 of 1932.**

Indian Income-tax Act, XI of 1922, Section 10 (1): Money lost in armed dacoity from assessee's office—whether should be allowed for, in computing the profits of the business.

Assessee carried on business of import and sale of piece-goods, and for that purpose accepted deposits from various people and paid interest on those deposits, the money being used in the business, but had not a money-lending business so that cash did not form the assessee's stock in trade. On 6th July, 1930, at 9 P.M., certain persons, along with B. D., an employee of the assessee, entered the office where the cashier and *munim* were counting the realizations of the day, demanded money and currency notes, etc., and got away with Rs.14,440. The assessee claimed that as the money was stolen from his office the loss was incidental to his business and should be allowed for in computing his taxable income. He relied solely on sub-section (1) of Section 10 of the Income-tax Act. The Income-tax Officer treated the loss as one of capital and disallowed the claim.

Held, that the profits of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts, and as it could not be said that the loss in this case was expenditure necessary for the purpose of earning the receipts of the business carried on by the assessee the amount could not be deducted in computing the profits of the firm.

Gresham Life Assurance Society v. Styles (1), Ramaswami Chettiar v. Commissioner of Income-tax, Madras (2),

and Konstam's Law of Income-tax, 5th edition, page 121, relied upon.

Case referred under Section 66 (2) of the Income-tax Act, by Mr. W. R. Pearce, Commissioner of Income-tax, for orders of the High Court.

KISHEN DAYAL, for Petitioner.

ASA RAM AGGARWAL, for J. N. AGGARWAL, for Respondent.

The order of the Court was delivered by—

ADDISON J.—On an application under section 66 (2) of the Income-tax Act, a reference was made by the Commissioner of Income-tax to this Court on the 5th September, 1932, for decision of the following question of law:—

“ Whether the sum of Rs.14,440, lost in cash, as a result of a dacoity on the assessee's firm by an employee with the assistance of and in collusion with others, is a deduction which can be set off in computing the profits of the firm ?”

This case has a long history. The reference was sent back by this Court with a direction to state specifically the facts on which it was made, that is to say, the Commissioner was directed to report whether the facts mentioned in paragraph 2 of the petition and the affidavit of the assessee were correct and in what respect. The following remarks also occur in the order of this Court:—

“ It appears that the Commissioner, the Assistant Commissioner and the Income-tax Officer have all proceeded on the assumption that the assessee carried on business of import and sale of piece goods. The learned Commissioner did not deal with the objections of the assessee to the effect that he did money-

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lending and banker business as well, and the learned counsel who has appeared for him before us is not prepared to make a statement as to the correctness or otherwise of the facts mentioned by the assessee in question No.2 which he had asked the Commissioner to refer to this Court. In our opinion the facts stated in this question are vital for a correct answer to the reference and the Commissioner should have dealt with them in more detail.”

The Commissioner of Income-tax has again reported the facts which are as follows :—

Since the year 1923-24 the assessee's sources of income chargeable to income-tax have never been noted to be more than import and sale of piece-goods, commission agency, interest on securities, dividends and property. There is no suggestion whatever on the record that the assessee was at any time engaged in money-lending business as well. When the assessment for the year 1931-32 was under consideration, the assessee claimed a deduction of Rs.14,440 on account of loss of cash by a dacoity, the circumstances surrounding which were described by the assessee as follows :—

“ At 9 P.M. on the 6th July, 1930, certain persons along with Bishambar Dayal, an employee of the assessee, entered the office where the cashier and the *munim* were counting and totalling the realizations from the business of the day and were engaged in their daily routine work incidental to the business of the assessee. The intruders at the point of their pistols demanded money, currency notes, etc. with the cashier and they were compelled to do so.”
“ From the facts given,” the account continues,
“ It is clear that the assessee was deprived of his

money as a result of political commotion and the crime was perpetrated by Bishambar Dayal in collusion with and with the assistance of other persons.”

The petition of the assessee continues as follows:—

The above circumstances give rise to the following inferences—

- “ (a) That the assessee suffered this loss during his usual business hours in business premises.
- (b) That the employees were engaged in work incidental to the business of the assessee.
- (c) That the accident occurred on account of some neglect of the cashier and the *munim* and was done through the agency of Bishambar Dayal.
- (d) That the loss consisted of realizations of the day for the business transacted.”

For these reasons, it was claimed that the loss suffered by the assessee was a loss incidental to the business and should be allowed for in computing income-tax. In the opening lines of this petition, it was stated that the assessee was a firm carrying on business of piece-goods, banking, financing, etc., at Kucha Natwan, Delhi, and other places. On this the Income-tax Officer had noted, “ No banking, financing pertains to assessee’s own branches.”

Having considered this memorandum, the Income-tax Officer disallowed the claim, stating that it was not a case of embezzlement or of loss of stock-in-trade, but it was clearly a loss of capital.

There was an appeal to the Assistant Commissioner of Income-tax on the following grounds:—

(1) That the learned Income-tax Officer should have computed the profits and gains of the assessee in accordance with reasonable business methods.

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(2) That he should have held that the loss of the sum of Rs.14,440 was a loss of his stock-in-trade.

(3) That he should have held that this loss accrued to the assessee through the agency of Bishamber Dayal and on account of neglect on the part of the *munim* and the cashier of the assessee.

(4) That he was wrong in holding that the loss was a loss of capital.

There was no allegation that the assessee claimed the loss as a money-lender or banker. The Assistant Commissioner dismissed the appeal and said that the stock-in-trade of the assessee was not cash but piece-goods and various other articles of Indian manufacture.

This was a definite finding of fact which apparently was not disputed by the assessee when he put in his application under section 66 (2) of the Income-tax Act, asking the Commissioner to state a case on the questions involved for a decision of this Court. The Commissioner has remarked that at no stage of the proceedings before the income-tax authorities did the assessee contend that the loss had occurred in connection with his business as money-lender or banker. The same findings were repeated by the Commissioner in the statement of the case to this Court and it was only when the Commissioner sent his draft statement of the case to the assessee that the latter put in an affidavit alleging that he carried on business in money-lending as well. The Commissioner refused to accept this affidavit as it was fresh evidence and had not been produced before the income-tax authorities. He informed the assessee to this effect and forwarded the reference to this Court as it stood. This Court, however, sent back the case for further findings as already

indicated. These further findings were directed to be as regards the question whether he carried on the business of a money-lender or banker.

On receipt of the direction of this Court, the Commissioner caused further enquiry to be made by the Income-tax Officer who made a report which is Appendix C. This report is based on an examination of the assessee's account and is to the effect that the assessee does not carry on money-lending business and that cash does not form the assessee's stock-in-trade. It has also been found that owing to the prominent social position and prosperous financial condition of the assessee he is entrusted with a lot of money by people to whom the assessee pays interest, the money apparently being employed in the business.

On these facts, it is clear that the allegation of the assessee that he carried on money-lending and banking business is false. The learned counsel appearing for the assessee admitted that none of the allowances in sub-section 2 of section 10 of the Income-tax Act covered the present case. He relied simply and solely on sub-section 1 of section 10 which is to the effect that the tax should be payable by the assessee under the head "business" in respect of the profits and gains of any business carried on by him. He admits that had the assessee been carrying the money in his own pocket, he could not have claimed a deduction but he stated that as it was stolen from the office it was a legitimate deduction for the purpose of calculating the net profit accruing to the firm.

At page 121 of Konstam's Law of Income-tax, 5th edition, occurs the following passage:—

"There are also specific prohibitions against the deduction, in computing profits, of any loss not connected with or arising out of the trade or profession;

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in order to be deducted, the loss must be in the nature of a commercial loss, and therefore, damages for personal injuries due to the negligence of the traders' servants, and penalties for breaches of the customs laws are not to be deducted, nor is a loss by defalcation, or by excessive drawings on the part of a director, such payments are not necessarily incurred, nor do they form a necessary risk, in earning the profits."

It follows that this loss of Rs.14,440 by armed dacoits cannot be deducted. It was not necessarily incurred nor did it form a necessary risk in earning the profits. It was not a loss in the nature of a commercial loss.

In *Gresham Life Assurance Society v. Styles* (1) Lord Halsbury said :—" The thing to be taxed is the amount of profits and gains. The word ' profits ' I think is to be understood in its natural and proper sense—in a sense which no commercial man would misunderstand."

There is a decision of a Special Bench of the Madras High Court reported as *Ramaswami Chettiar v. Commissioner, Income-tax, Madras* (2). Two of the Judges held that the loss incurred by theft of money due to a money-lending business and in the business premises should not be allowed for in computing the income-tax, where the theft was committed by persons who were not at the time of the offence employed as clerks or servants in the business of the assessee. The third Judge dissented. He apparently held that in a money-lending business cash might be looked upon as the stock-in-trade. At page 910

(1) 1892 A. C. 309.

(2) (1930) I. L. R. 53 Mad. 904, 910 (F. B.).

of this report is given the following remark of Lord Herschell :—

“ The profit of a trade or business is the surplus by which the receipts from trade or business exceeded the expenditure necessary for the purpose of earning those receipts.”

It cannot be said that this was expenditure necessary for the purpose of earning the receipts of the business carried on by the assessee.

This is the case of an assessee who carries on business in piece-goods and for that purpose accepts deposits from various people and pays interest on those deposits, the money being used in the business. No money-lending business is carried on, so that, if there is any force in the contention that money would be the stock-in-trade of such a business, it does not arise in the present case. It was certainly not a loss of the stock-in-trade of the business described, nor was it expenditure necessary for carrying on the business or for the purpose of earning the receipts. The loss was clearly a loss of capital and no allowance can be made for it, while it was not claimed that it fell within any of the allowances given in section 10 (2) of the Act.

For the reasons given, we would answer the question stated in the negative. The assessee will pay the costs of the Commissioner of Income-tax.

C. H. O.

Reference answered in the negative.

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