The Commissioner of Income-tax and Orissa Vs. Sir Kameshwar Singh of Darbhanga

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Court : Mumbai

Decided On : Dec-12-1941

Reported in : (1942)44BOMLR778

Judge : Atkin, ;Thankerton, ;Romer and ;George Rankin, JJ.

Appellant : The Commissioner of Income-tax and Orissa

Respondent : Sir Kameshwar Singh of Darbhanga

Disposition : Appeal dismissed

Judgement :

Thankerton, J.

1. In connection with the assessment of the profits and gains of his business as a money-lender for the year 1931-1932, the respondent claimed the deduction of Rs. 2,07,018 expended in the year of account, as an allowance admissible under Section 10(2) (ix) of the Indian Income Tax Act, 1922. The respondent's claim was rejected by the Income-tax Officer, the Assistant Commissioner of Income-tax, and the Commissioner of Income-tax, the last of whom, at the request of the respondent, made a reference under Section 66(2) of the Act to the High Court of Judicature at Patna, which decided the reference in favour of the respondent by a judgment dated October 17, 1939, against which the present appeal has been taken by the appellant.

2. The relevant provisions of Section 10 of the Act are as follows:--

10 (i) The tax shall be payable by an assessee under head 'Business' in respect of the profits or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:--

* * * * * * *(ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains:...

3. The expenditure sought to be deducted consisted of law charges incurred during the accounting year in connection with a suit for damages brought, in 1926 by Major Anthony John and others, shareholders in the Agra United Mills, Limited, against the respondent's father, the late Maharajadhiraja Sir Rameshwar Singh and several other defendants, for conspiracy, collusion, misrepresentation, breach of contract, etc. During the pendency of the suit, the late Maharajadhiraja died on July 3, 1929, and

the respondent and his brother were substituted for their father. The suit was dismissed by the Court of the Additional Subordinate Judge of Agra on February 26, 1931.

4. The only question in the appeal is whether the expenditure in question was 'incurred solely for the purpose of earning' the profits or gains of the respondent's money-lending business. The respondent has continued the money-lending business carried on by his father. The question of law which was referred to the High Court was, 'Whether the cost in question is legally a business deduction or not?' After a scrutiny of the plaintiffs' allegations in the Agra suit of 1926, and the findings of the Agra Court which led to its dismissal, the appellant states in paras. 8 and 9 of his statement of case under Section 66 (2) of the Act:--

8. The only connection of the late Maharajadhiraja with the Agra United Mills Co. Ltd., was that he was a share-holder, and that he has advanced a loan of Rs. 10,00,000 to the Mill. For the latter the late Maharajadhiraja had brought a suit and obtained a decree in 1929. The expenses incurred in this latter suit have been allowed as expense incurred in the assessee's money-lending business. The Agra suit had no connection with any business of the assessee. He was involved in the suit because he happened to be a very rich man and was therefore liable to attack by unscrupulous persons to relieve him of part of his surplus cash.

Opinion of the Commissioner.

9. On the above findings of fact, it is respectfully submitted that the expense for defending the Agra suit was not a business expense, that is, it was not an expense incurred for earning any profits assessed to income-tax, and as such the assessee is not entitled to deduct the sum as a 'business deduction' against the assessable profits.

5. On November 23, 1927, the High Court passed an order which required a further statement from the appellant as to 'Whether the money-lending business of the late Maharajadhiraja and the assessee is such as would have included transactions of the kind into which he was alleged to have entered with the United Agra Mills Ltd.' In response to a request by the appellant, the respondent furnished him with the details of six other transactions, which the respondent claimed to be comparable to the transaction now in question. Thereafter the appellant, on August 22, 1938, submitted a further statement of case relating to these six transactions in which he sought to distinguish these six transactions from the transaction here in question, and answered in the negative the question put to him by the High Court. The appellant's reason for distinguishing these six transactions will be referred to later.

6. The learned Judges of the High Court held that the conclusion of the appellant could not be supported on the facts stated by him, and that the assessee was entitled to the deduction claimed by him. As the appellant had done, they scrutinised the plaint and the judgment in the Agra case, as providing the test for decision of the reference. Agarwala J. states:--

The contention that the suit against the Me Maharaja was instituted against him not because he was a money-lender but because he was a wealthy nobleman is; not, in my opinion, acceptable. It was because the late Maharaja lent money to the Company that an opportunity was afforded to the plaintiffs to allege that the advance of 10

lakhs of rupees actually made was only a part performance of a contract the scope of which was very much wider. It was the relationship of money-lender and borrower which provided a foundation on which the allegations against the late Maharaja were based and the main purpose of the suit was to obtain damages for the breach of an alleged money-lending transaction.

Meredith J. said:--

I agree with the view taken by my learned brother. The late Maharajadhiraj brought a suit for recovery of 10 lakhs of rupees advanced to the Mill, a decree was obtained in 1929, and the assessee was allowed to deduct the expenses incurred in this suit as expenses incurred in his money-lending business. If spending money to recover this 10 lakhs is treated as not being in, the nature of capital expenditure, and incurred solely for the purpose of earning the profits or gains of the money-lending business, then I cannot see why money spent in defending a false claim arising out of the same transaction is not to be treated upon the same basis. Both suits were based upon the same transaction, namely, the advancing of the ten lakhs, though no doubt very different versions of that transaction were given by the plaintiffs in each of the suits, the version of the plaintiffs in the) suit against the Maharaja being almost completely false. That version might have been an almost completely false version of what took place, but it cannot be denied that it was built up upon the transaction in which the loan of the ten lakhs was made. If the Maharaja was to show a profit upon this transaction, it was not only necessary for him to sue for recovery, but also to defend any false claims which might have been based on the transaction. Defence of such suits must be regarded, in my view, as a necessary though unpleasant part of the business of money-lending. I am satisfied that the suit was primarily against the Maharaja in his capacity as money-lender, and not merely as a rich nobleman, and it was based primarily too upon breach of contract by the money-lender.

1. In the opinion of their Lordships, the only right view as to the nature of the Agra suit is that expressed by these learned Judges. It appears that the conclusion arrived at by the appellant was mainly based upon his view that there was no connection between the late Maharaja's loan of Rs. 10 lakhs to the Mills and the transactions alleged by the plaintiffs in the Agra suit. This view is expressed in para. 8 of the appellant's statement of case, and is repeated in his further statement of case in commenting on the six other transactions cited by the assessee. In reference to Nos. (ii) and (vi), he states: 'In both these cases the assessee found himself compelled to take over the businesses and run them on, his own account in order to safeguard the money which he had previously invested in them; whereas in the case of the Agra United Mills Ltd., there was no connection between the loan of Rs. 10 lakhs and the transaction into which he was alleged to have entered with the company. It will be seen that the former transaction is expressly dissociated from the latter in para. 39(d) of the plaint in the civil suit.' In the opinion of their Lordships, the appellant has not sufficiently considered the relation of the paragraph to which he refers to the rest of para. 39. The opening sentences make clear that the loan of Rs. 10 lakhs (of which 81/2 lakhs had already been advanced) was part of the promises made in the alleged agreement of October 21, 1923, (see para. 34) under which the Maharaja was to finance the company, and the remainder of para. 39 is concerned with the alleged failures of the Maharaja to implement his promises and in crediting the Maharaja with oblique motives for his failure. The allegations of fraud, conspiracy, etc., were merely the extravagant embroidery which is commonly found in such actions; they do not alter the main character of the action as being directed against the late Maharaja

as the money-lender, and the latter's defence to the action was just as essential for the full protection of his rights as the creditor in the loan of Rs. 10 lakhs, as was his suit for the recovery of the loan. It has to be remembered that money is the stock-in-trade of a money-lender. The appellant might well have come to a different conclusion, if he had realised the close connection of this loan with the transactions alleged in the Agra suit. If it really added anything, their Lordships would agree with the High Court that at least three of the other transactions referred to in the appellant's further statement of case provide evidence that the alleged transaction with the Agra United Mills was not foreign to the money-lending business of the respondent and his father.

2. Their Lordships are, therefore, of opinion that the facts stated by the Commissioner cannot justify the opinion expressed by him, but that the expenditure in question was incurred solely for the purpose of earning the profits or gains of the money-lending; business, and that the High Court were right in holding the respondent entitled to the deduction claimed, and in answering the question of law asked by the Commissioner in favour of the respondent.

3. Accordingly, their Lordships will humbly advise His Majesty that the appeal should be dismissed and that the judgment of the High Court should be affirmed. The appellant will pay the respondent's costs of the appeal.