Narang Industries Ltd. Vs. Commissioner of Income-tax, New Delhi.

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Court : Delhi

Decided On : Aug-14-1967

Reported in : [1967]66ITR316(Delhi)

Appeal No. : Income-tax Reference No. 1 of 1964

Appellant : Narang Industries Ltd.

Respondent : Commissioner of Income-tax, New Delhi.

Judgement :

The following question of law has been referred to this court by the Income-tax Appellate Tribunal under section 66(1) of the Indian Income-tax Act, 1922 :

&quto;Was the claim of Rs. 15,700 written off in the circumstances mentioned above, a permissible deduction as a bad debt ?&quto;

Narang Industries Limited (hereafter referred to as the assessed-company) is a public limited company owning a distillery. The assessed-company mainly derives its income from running a distillery. In 1947, one Shri Prem Singh approached the assessed-company with a scheme for manufacture of bricks. An arrangement was arrived at between the assessed-company and said Shri Prem Singh to start a brick kiln and the terms of the arrangement were confirmed by the assessed-company by letter dated February 17, 1947. Under that letter the assessed-company, inter alia, agreed to &quto;take up the business on the following terms and conditions&quto; :

(a) That the assessed-company shall finance the business up to the amount required for turning out 50,000 bricks per day;

(b) that Shri Prem Singh will acquire the necessary area of land for the purpose in consultation with the chairman of the assessed-company;

(c) that Shri Prem Singh will be in charge of the work but the staff will be appointed by the assessed-company in consultation with Shri Prem; and

(d) that all the sales and purchases of the building material and manufactured goods will be carried out by Shri Prem Singh in consultation with the chairman of the assessed-company.

The arrangement was to last for the duration of the first lease of the land to be acquired for the purposes of the kiln but it could be renewed by mutual agreement. Clause 7 of the letter reads :

&quto;You will be paid seven annas in the rupee of net profits in lieu of the work done by you. Net profits would be arrived at after deducting all expenses and income-tax, etc., after the first lto of fifty thousand bricks has been sold. Accounts will be roughly made up every three months and if they disclose a profit, one half of the estimated profit will be divided in the above proportion. Final accounts shall be made up at the end of every year.&quto;

In pursuance of the agreement, the assessed-company advanced Rs. 21,000 to Shri Prem Singh but the business could nto be actually started due to the partition of the country. The assessed-company filed a suit for recovery and rendition of accounts and a decree was passed in its favor for Rs. 5,595. Shri Prem Singh preferred an appeal which was compromised. Under the compromise the assessed-company was paid Rs. 5,000 and two claims of Rs. 3,063 and Rs. 3,063 and Rs. 2,950. Ntohing, however, could be recovered on these claims and Rs. 15,700 remained due to the assessed-company. The said amount of Rs. 15,700 was written off in the accounting year relevant to the assessment year 1956-57 with which we are concerned.

It is relevant to point out that the learned subordinate judge, who tries the suit mentioned above, decided the same on the fotoing that there was a partnership between the parties. It is in these circumstances that this amount of Rs. 15,700 was claimed as a bad debt under section 10. The Income-tax Officer decided that the loss was nto allowable being loss of capital. This finding was upheld buth by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal in their order said :

On behalf of the assessed it was urged by Shri Kirpal that the, loan was advanced in the coarse of the companys financing business and it was a simple case of debt incurred in the course of business.

We would have accepted this contention but there is a clear finding of the Civil Judge in Suit No. 868 of 1950 that there was a relationship of partnership between the parties. We agree with the Appellate Assistant Commissioner that in the circumstances of the case, the debt could nto have been allowed as a claim of bad debt.&quto;

Mr. B. N. Kirpal, the learned counsel for the assessed-company, based his argument mainly on the observation of the Tribunal qutoed above and said that the Tribunal had expressed itself in favor of the assessed-company contention that the loss arose out of the financing business but wrongly felt bound by the decision of the civil court. There is no finding of fact by the Tribunal that the money was advanced in the course of money-leading business of the assessed-company. The letter dated February 17, 1957, clearly shows that the assessed-company was venturing on a new business and the amount was put in as a capital investment and nto in connection with the business being carried in by the assessed-company. It was thus a capital loss and nto a loss incidental to the business which the assessed-company was carrying on. In this view, it would be immaterial whether the assessed-company in tended to carry on the new business in partnership with Shri Prem Singh or toherwise. Section 10(2) can have no applicability in these circumstances.

The learned counsel for the assessed-company then argued that the loss could be allowed under section 10(1). Since we have held that the loss was nto incidental to the assessed-company business but was of a capital nature, section 10(1) is also nto

attracted.

The question is, thereforee, answered in the negative and against the assessed-company. There will, however, be no order as to costs.

Question answered in the negative.