

Privy Council Appeal No. 35 of 1933.

F. E. Dinshaw - - - - - *Appellant*

v.

The Commissioner of Income Tax, Bombay Presidency - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND JUNE, 1934.

Present at the Hearing :

LORD TOMLIN.

LORD RUSSELL OF KILLOWEN.

LORD MACMILLAN.

SIR LANCELOT SANDERSON.

SIR SHADI LAL.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The point raised by this appeal is short and free from complication. The exact facts are in some respects a little difficult to ascertain, but for present purposes they may be accurately stated thus :—

The appellant is a member of a firm who acted as agents for a limited company, which carried on the business of a cotton mill.

The appellant was assessed to income tax under the Indian Income-tax Act 1922 for the year 1929–30 on the basis of his income for the preceding year 1928–1929. In that preceding year the firm had, under guarantees given by them, been compelled to pay and had paid to the lenders large sums which had been advanced to the limited company, and which the limited company had failed to repay. As a result the limited company became immediately indebted to the firm in a large sum, the share of the appellant therein being the sum of Rs. 1,73,500. It was alleged by the appellant that this indebtedness was irrecoverable from the

limited company, and he claimed to have the said sum of Rs. 1,73,500 allowed to him as a deduction in arriving at his assessment to income tax.

It does not seem to have been disputed in India, and it was not disputed before their Lordships' Board, that if this debt of the limited company was in fact irrecoverable, or in other words was a bad debt, the appellant would be entitled to the deduction which he claimed.

Those being the facts, the dispute which has arisen and which has now come before their Lordships, on appeal to His Majesty in Council, is whether the debt, being a debt due from a limited company, can in law be treated as a bad debt so long as the limited company is not actually wound up or has not ceased to be a going concern.

The Assistant Commissioner, by his order of the 15th January 1930, stated that "so long as the mill is working it is impossible to say that the money advanced by assessee therein can be regarded as bad debts," and he disallowed the claim for deduction. With this decision the Commissioner declined to interfere. From documents in the subsequent proceedings it appears that the Commissioner acted upon the view that the Assistant Commissioner's decision was based, not on a matter of law, but purely on a finding of fact on the evidence before him. In this their Lordships think that the Commissioner was mistaken and indeed the later history makes this clear.

By an order of the High Court of Bombay dated the 30th January 1931, and made under section 66 of the Indian Income-tax Act 1922, the Commissioner was compelled, somewhat reluctantly, to state a case upon the question of law which had arisen and to refer it to the High Court.

The question which the Commissioner was directed to raise by the case stated was :—

"Whether it is necessary to constitute moneys due by a joint stock company, a bad debt or a business loss to the creditor that the company should be actually wound up or have ceased to be a going concern."

In the case as stated the Commissioner expanded this question and added another question dealing with the specific sum in dispute: but the High Court's answer to the reference ignored the Commissioner's additions. The order of the High Court (dated the 7th March, 1932), was in the following terms :—

"For the reasons stated in the accompanying judgment, the court answers the Reference by saying that to constitute moneys due by a joint stock company engaged in business a bad debt or a business loss to the creditor, it is necessary that the company should have ceased to be a going concern.

"The assessee should pay the costs on the original side scale to be taxed by the taxing master, original side."

The learned Chief Justice confined his judgment to companies which were carrying on business, and held (1) that so long as the company was on the register and so long as it was carrying

on business as a going concern, it is impossible to say that any debt which it owes is necessarily irrecoverable ; (2) that the income tax officer was entitled to decline to go into evidence as to the value of the assets or extent of the liabilities of the company and (3) that to constitute moneys due by a company a bad debt or a business loss to the creditor it is necessary that the company should have ceased to be a going concern.

Their Lordships know of no principle or authority upon which these views of the learned Chief Justice can be supported. Whether a debt is wholly or partly and to what extent bad or irrecoverable is in every case (and whether the debtor is a human being or a joint stock company or other entity) a question of fact to be decided by the appropriate tribunal upon a consideration of the relevant facts of that case. There is no justification for the suggestion that a practice should prevail in the Commissioner's office under which a debt due from a limited company which is still a going concern, is incapable of being treated as a bad debt.

Their Lordships are of opinion that the order of the High Court should be discharged and in lieu thereof an order should be made answering in the negative the question which the Commissioner was directed to raise and which is set out above. As a result the appellant's assessment and his claim to the deduction, will have to be reconsidered by the appropriate authority in the light of all relevant evidence.

Their Lordships will humbly advise His Majesty accordingly. The respondent must pay to the appellant his costs of the proceedings here and in the High Court of Bombay.

A petition was presented to their Lordships' Board praying that an affidavit relating to the assessments made upon the appellant for later years might be referred to upon the hearing of the appeal. Their Lordships are of opinion that no order should be made on that petition as to costs or otherwise.

In the Privy Council.



F. E. DINSHAW

*,

THE COMMISSIONER OF INCOME TAX,
BOMBAY PRESIDENCY.



DELIVERED BY LORD RUSSELL OF KILLOWEN.

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