

(1956) 02 MAD CK 0010

In the Madras High Court

In Re: Parasram Jethanand

Date of Decision : 15-02-1956

Acts Referred:

Income Tax Act, 1961 — Section 14(2)(c), 24(1)

Citation : (1956) 2 MLJ 119

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—These three references u/s 66(1) of the Indian Income Tax Act raise for consideration a common question of law

regarding the proper interpretation, among others, of Section 14(2)(c) and the first proviso to Section 24(1) of the Income Tax Act.

2. The admitted facts in regard to the above cases are these : Referred Case No. 47 of 1951 relates to the assessment of one Parasram Jethanand,

a merchant carrying on business in paper at Madras and Bangalore. The reference concerned with the assessment years 1946-47 and 1947-48.

The Madras business yielded a profit in the two years named above of Rs. 17,340 and Rs. 55,621 respectively, while the assessee sustained a

loss in the branch business at Bangalore of Rs. 6408 and Rs. 14,603, in the two respective years. The assessee claimed that for the computation of

the total income on which he could be taxed the loss sustained by him in his business in paper at Bangalore should be taken into account and it was

only the resultant figure that could be deemed to be his assessable profit for the respective years. The Income Tax Officer negatived this claim on

the ground that the loss incurred by him in the Bangalore branch could not be set-off on the ground that it was forbidden by reason of the first

proviso to Section 24(1) of the Income Tax Act. The Appellate Assistant Commissioner on appeal however allowed the assessee's appeal basing

himself on the decision of the Bombay High Court in COMMISSIONER OF Income Tax, BOMBAY CITY Vs. MURLIDHAR

MATHURAWALLA MAHAJAN ASSOCIATION., . The department filed an appeal to the Tribunal and this appeal was allowed, the Tribunal

relying on a decision to the contrary effect by the Allahabad High Court in In Re: Income Tax Assessment of Misrimal Gulabchand of Beawar for

the year 1944-45, . On these facts, the assessee applied u/s 56(1) for the reference of the following question of law to this Court and this question

has been referred to us for determination:

Whether in view of the provisions of Sections 14(2)(c) and 24(1) and its provisos the loss arising to the assessee from his business in Mysore

could be set off against his income from business in the taxable territories, namely, Madras?

3. We shall set out the facts of the other cases also before considering the question referred to us. Referred Case No. 1 of 1952 relates to an

assessment of a Hindu undivided family of which one A.K.T.K.M. Sankaran Nambudripad is the manager. The assessee was carrying on a

wholesale trade in rice, pepper and other commodities and also banking business at Calicut for the assessment years 1947-48 the accounting

year of the assessee being the year ended 24th October, 1946. The assessee claimed a loss of Rs. 2,974 in pepper. The loss was incurred by

reason of purchase and sale in the Allepey market in the former native state of Travancore. But the transactions were recorded in the accounts

maintained by the assessee at Calicut. One of the questions raised was whether the loss in question accrued or arose in the Travancore State, or

inside the taxable territory, the contention of the assessee being that it arose within the taxable territories. The finding of the Income Tax Officer

was that the loss accrued in the Travancore State and he disallowed this sum of Rs. 2,974 from the computation of the profits for the purpose of

the assessment by reason of the first proviso to Section 24(1). As in the previous case the Appellate Assistant Commissioner without recording

any finding as regards the locus of the loss but assuming that it arose outside the taxable territory allowed the loss in computing the taxable income

of the assessee, this Officer relying on the decision of the Bombay High Court to which we have already referred. There was an appeal by the

department to the Tribunal and the Tribunal recorded two findings; (1) that on the facts before them the loss in question accrued or arose in the

Indian State of Travancore and (2) that this loss could not be set-off against the income from business in the taxable territories. The assessee

applied to the Tribunal to refer the question of Law to this Court. The two questions which, have been referred for our decision u/s 66(1) are:

(1) Whether the loss in pepper business arose in the Travancore State?

(2) If so whether in view of the provisions of Section 14(2)(c), 24(1) and its provisos, such loss could be set off against the income from business

in the taxable territories?

In the last of these cases R.C. 48 of 1952 the assessee Ponnappa Chettiar carried on a mundy business at Erode, with a branch at Pudukkottai.

He also indulged in speculative forward contracts in turmeric with merchants in the State of Kolhapur. The result of this was the Pudukkottai

branch sustained a net loss of Rs. 8,475 and the head office at Erode a loss of Rs. 10,672 during the assessment years 1948-49 with which this

reference is concerned. The assessee put forward two claims : (1) that on the facts of the case the inference to be drawn of the transactions had by

him was that those losses aggregating to Rs. 19,147 must be taken to have accrued and did arise in the taxable territories and secondly that even if

he was wrong in this contention and the loss must be taken to have arisen in an Indian State, even then he was entitled to set-off this sum in the

computation of his total income. The Income Tax Officer found that the locus of the speculative transactions and the place where the loss was

incurred were in the former native State and refused to allow the set-off. On appeal by the assessee the Appellate Assistant Commissioner

confirmed the finding of the Income Tax Officer regarding the places where the loss had occurred but applying the decision of the Bombay High

Court in COMMISSIONER OF Income Tax, BOMBAY CITY Vs. MURLIDHAR MATHURAWALLA MAHAJAN ASSOCIATION., ,

granted the set-off claimed by the assessee. The department appealed to the Tribunal and before it the assessee gave up any challenge to the

concurrent finding of the departmental authorities as regards the place where the loss had occurred. The Tribunal differing from the Appellate

Assistant Commissioner followed the Allahabad decision we have referred to

above and reversed the order of the Appellate Assistant

Commissioner and declined the set-off of the loss claimed by the assessee. On a request by the assessee they have submitted the following

question for decision to this Court u/s 66(1) of the Act:

Whether the loss of Rs. 19,147 sustained by the assessee in respect of its separate speculation business in the State of Kolhapur can be set off

against its Indian income?

4. It will be seen from the above that the question in R.C. No. 47 of 1951, 48 of 1952 and the second question in R.C. No. 1 of 1952 raise a

common point for decision and that the question No. 1 in R.C. No. 1 of 1952 would have to be considered only in the event of this common

question being answered against the assessee.

5. We shall now consider the proper interpretation of Section 14(2)(c) and the first proviso to Section 24(1) of the Income Tax Act. Before doing

so we shall refer to the other provisions of the Act which are relevant in this context and which have to be taken into consideration in arriving at the

proper interpretation of the sections we have mentioned above. Section 3 which is the charging section enacts that tax at the rate specified in the

annual Finance Act shall be charged in accordance with and subject to the provisions of this Act ""in respect of the total income of the previous year

of every individual, Hindu undivided family, company and local authority, etc"".

What this total income connotes is to be gathered from Section 4

which enacts that the total income of any person includes

all income, profits and gains from whatever source derived which (a) are received or deemed to be received in the taxable territories in such year

by or on behalf of such person or (b) if such person is resident in the taxable territories during such year, (i) accrue or arise or are deemed to

accrue or arise to him in the taxable territories during such year, or (ii) accrue or arise to him without the taxable territories during such year.

6. The rest of the provision is not relevant and need not therefore be referred to. What is to the point is that the total income in the case of residents

- this is the case with which we are concerned in these references - includes ""all income which accrues or arises to him without the taxable territory

during such year"". In other words the place where the income arises or accrues is irrelevant and all such income is deemed to be part of the income

of the resident-assessee. This aspect is emphasised by the definition of total income in Section 2(15) of the Act which runs thus:

"total income" means total amount of income, profits and gains referred to in Sub-section (i) of Section 4 computed in the manner laid down in this

Act;

and, "total world income" is similarly defined. The charging Section 3 has to be read with Section 6 which sets out the heads of income chargeable

to Income Tax. It is unnecessary to set out this section. It is sufficient to say that it consists of six specific heads, the 5th head being "income from

other sources". The fourth of these heads is "Profits and gains of business, profession or vocation". u/s 10(1) which deals specifically with this last

mentioned head of income the tax is payable by the assessee "in respect of the profit or gains of any business, profession or vocation carried on by

him." Sub-section (2) of Section 10 enumerates the deductions which are permissible in computing the income under this head which is not relevant

to the present discussion. It is clear that if one paused here and analysed the concept of income from business, the assessable income cannot be

computed without making an allowance for the loss incurred in that business. It is the profit earned by the assessee during the entirety of the

accounting year from business that is the subject-matter of taxation u/s 3 read with Sections 6(4) and 10(1), and not that in respect of each

individual transaction which results in profits a separate computation is made with an independent taxability. If, therefore, some of these

transactions result in a profit and others result in a loss, all within the accounting year, it is the net result that has to be ascertained to find out

whether the assessee had earned profits under the head business, and if so how much. It will also be seen that the geographical location of the

business in any particular place would not make any difference, so long as there is a unity of ownership and control. The income or profits from

every business carried on in any place is totalled up for the purpose of arriving at the income, profits or gains from the head "business" under

Sections 6 and 10. Just as there is no distinction between different branches of a business carried on in the taxable territory and between them or

any of them and the head office, there is no distinction between the branches of the same assessee located outside the taxable territory. Such

income which accrues is still income under the head ""business"", and it is the totality of the operations and transactions taking place in every place

where the assessee carries on his business that yields the income for the purpose of computation u/s 10. So far there does not appear to be any

contest, and indeed we did not gather the learned advocate for the Commissioner disputed this view. It would follow from this, that if the books of

the assessee showed any loss incurred in respect of transactions effected in any particular* branch, while the operations in the other branches

resulted in a profit, it is the net result of these transactions, namely, after adjusting the profits and losses in regard to the totality of the transactions

that would yield the income or profits under the head ""business"" to be computed under Sections 6 and 10. One further fact we might notice at this

stage. If any particular head of income u/s 6 resulted in a loss while another head yielded profit, there is no machinery or provision upto this stage

which would enable the assessee to set off the loss under one head of income against profits under another of the heads enumerated in Section 6. It

is the proper function of Section 24(1) to redress the injustice arising from this feature. Accordingly this sub-section enacts:

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to

have the amount of the loss set off against his income, profits or gains under any other head in that year.

We shall be referring to the first proviso u/s 24(1) whose interpretation and legal effect are raised by these references a little later.

7. In this state of affairs Section 8 of the Income Tax (Amendment) Act XXIII of 1941, amended Section 14(2) of the main Act by the

introduction of a new Sub-Clause (c) which when inserted read:

The tax shall not be payable by an assessee - (c) in respect of any income, profits or gains accruing or arising to him within an Indian State, unless

such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the

assessee, or are assessable u/s 42.

This amendment was necessitated by the provision for relief in respect of double taxation, where the same income was assessed to tax both in an

Indian State as well as in British India, operating to the disadvantage of the

British Indian exchequer by reason of the tax in Native States being levied at a lower rate. The result of this was that, though an assessee could not be taxed on profits which accrued to him in an Indian State unless it was brought over to British India or deemed to have been brought over to British India, still the loss incurred in an Indian State though it be in respect of another head u/s 6 could be set off u/s 24(1) for computing his total assessable income for the purpose of a charge to tax under Sections 4 and 3 of the Act. The effect of this was, however, modified to a little extent by reason of the provision in Section 16 (1)(a), under which sums exempted u/s 14(2) were included for the purpose of determining the rate payable by an assessee, though the exempted sums were themselves not liable to tax. This anomaly was redressed by the Income Tax (Amendment) Act (XI of 1944) which by its Section 8 inserted the first proviso to Section 24(1). This proviso ran:

Provided that, where the loss sustained is a loss of profits or gains which would but for the loss have accrued or arisen within an Indian State and would, under the provisions of Clause (c) of Sub-section (2) of Section 14 have been exempted from the tax, such loss shall not be set off except against profits or gains accruing or arising within an Indian State and exempt from tax under the said provisions.

The same amending Act also introduced a proviso to Sub-section (2) of Section 24 which provides for carrying forward the loss, but we are omitting this because it is in the same terms as the first provision to Sub-section (1) and the present case is not concerned with the carrying forward of the loss but only with the adjustment of losses in the same accounting year.

8. It is really on the terms of the first proviso to Sub-section (1) of Section 24 that the counsel for the Department wholly relies for his contention, that the loss incurred in an Indian State could not be set off against the profits accruing to him in British India, i.e., the taxable territories.

9. It is an elementary rule of construction, that a proviso is not normally construed other than as a subtraction of the main section and as introducing a qualification or exception from the enacting part. It is agreed by learned Counsel for the department that Section 24(1) read without the proviso only enables a set-off of losses under one head u/s 6 against the profits accruing under another head of income all in the same year and that so far

as the income accruing under the same head is concerned, it is the totality of the operations, and the final result of the adjustment in regard thereto

that would yield the income or loss from that head. If so much is common ground, it is rather difficult to appreciate the argument that the first

proviso to Section 24(1) even if read in conjunction with Section 14(2)(c) has introduced a radical change in the very concept of profits from

business, and that it has achieved a separation in and disintegration of the Same head of income based on the criterion of the seat of operation

therefore being within and without the taxable territory. We might also point out that in cases where the loss incurred by an assessee under the

head "business" in an Indian State exceeds the amount of his income or profit within British India, it is not disputed that by reason of Section 16(1)

(a) itself no tax would be payable by the assessee, because if there is no income there is no rate applicable to such non-existent income. The

argument, however, is that if the loss in a Native State does not wholly wipe out the profits earned in British India, the entire British Indian income

would be liable to tax without making any allowance for the loss sustained by the assessee under the same head in an Indian State. This is admitted

to be an anomaly, but is stated to result from the special provision in Section 16(1)(a). The main contention urged by Mr. Rama Rao Saheb

learned Counsel for the Department, was that the first proviso to Sub-section 24(1) was a positive provision, which must be taken to have

specifically enacted that losses sustained in business conducted in an Indian State could be set off against the profits for business in the taxable

territories only in those cases where the income from that business is brought over to British India and included in the assessable income of the

assessee. In other words he would urge that the income accruing in an Indian State was itself a head of income additional to those enumerated u/s

6, and that it was only the profits or loss incurred in the Indian State which might be set-off against each other and that loss in an Indian State could

not be set off against the profits in British India, though the loss was incurred in the conduct of "business" which was also the head u/s 6 in which

the British Indian income fell. We are unable to agree with this construction of the provision which involves the reading of the first proviso to

Section 24(1) as a positive enactment and as modifying the concept of income from business within Section 10 (1) of the Act.

10. So far we have considered the question on an independent examination of the relevant provisions. We find the same confirmed by the

preponderance of authority in the Indian decisions. That the function of Section 24(1) is to permit the set-off of a loss under one of the heads

mentioned is Section 6 against another of the heads of income accruing or arising in the same year is clear on the terms of the section, but if

authority were needed reference might be made to the decision of the Supreme Court in *Anglo-French Textile Co. Ltd. Vs. Commissioner of*

Income Tax, Madras, .Bose, J., who delivered the Judgment of their Lordships said:

Next, a set-off u/s 24(1) can only be claimed when the loss arises under one head and the profits against which it is sought to be set off arises

under a different head. When the two arise under the same head, of course the loss can be deducted, but that is done u/s 10 and not u/s 24(1).

See the decision of the Privy Council in *Arunachalam Chettiar v. Commissioner of Income Tax* .

11. The decision of the Bombay High Court in *COMMISSIONER OF Income Tax, BOMBAY CITY Vs. MURLIDHAR MATHURAWALLA*

MAHAJAN ASSOCIATION., ., is a direct decision on the point arising on these references. Chagla, C.J., after setting out the first proviso to

Section 24(1) and dealing with the argument of the Advocate-General appearing for the Commissioner, who put forward the same contention as

learned Counsel for the Department before us said:

Now, this proviso can have no application unless in the first place the section itself is applicable. The Advocate-General asks us to construe

Section 24 in the light of the proviso and to come to the conclusion that the set-off contemplated by Section 24 is not as between two separate

heads but even under the same head. That is contrary to all canons of construction and as emphasised by the Privy Council in *The Madras and*

Southern Mahratta Railway Vs. Bezwada Municipality, , where the language of the main enactment is clear and unambiguous, a proviso can have

no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what, clearly falls, within its express terms. To

my mind the scheme of the Act is perfectly clear. When you turn to Section 10 which deals with business it is a self-contained head. Different

businesses do not constitute different heads under the Income Tax Act. All businesses wherever carried on constitute one head which falls u/s 10

of the Act and in order to determine what are the profits and gains of a business u/s 10, an assessee is entitled to show all his profits and set-off

against those profits losses incurred by him in the same head.

12. A contrary view, however, was taken by the Allahabad High Court in *In Re: Income Tax Assessment of Misrimal Gulabchand of Beawar for*

the year 1944-45, . Malik, C.J., in his Judgment distinguished the decision of the Bombay High Court, to which we have just now adverted, on the

ground that, though Section 24(1) was concerned with making a provision for the loss incurred under one head to be set off against income under

another head, the first proviso of that sub-section had to be read along with Section 14(2)(c), and that as the income from the business in an Indian

State was not liable to tax unless it was brought into British India, the right to set-off a loss incurred in such a foreign business was confined to

those cases where the profit was liable to tax. In other words Section 14(2)(c), the first proviso to Section 24(1) and Section 10 have all to be

read together and if so-read, the loss could not be set off. We are unable to agree with this decision, as it seeks to attribute an effect to the first

proviso to Section 24(1) which it cannot bear and also because this view ignores the basic concept of what constitutes income from a business

within Section 10 read with Section 4(1)(b)(ii).

13. A similar question arose for consideration before the Nagpur High Court in two references which came up before it in 1952 in (1952) 22 ITR

448 , and (1952) 22 ITR 493 . The learned Judges preferred the Bombay decision to what might be termed the Allahabad view and answered the

question in favour of the assessee.

14. The Punjab High Court had occasion to consider this point in *Commr. of Income Tax, Punjab, Pepsu, Himachal Pradesh and Bilaspur, Simla*

Vs. Hira Mall Narain Dass, , where the learned Judges held after a discussion of the decisions to which we have referred in favour of the assessee

following the case in *COMMISSIONER OF Income Tax, BOMBAY CITY Vs. MURLIDHAR MATHURAWALLA MAHAJAN*

ASSOCIATION., . They held that Section 10 was not confined to business carried on in British India and that in computing the profits of that

business, losses wherever they occurred had to be taken into account not because of the provisions of Section 24(1) but because it was involved

in the very idea of income from business within Section 10. The High Court of Hyderabad in (1954) 25 ITR 309 has also taken the same view.

15. The Allahabad High Court had to consider this question again in 1955 in RAGHUNATH PRASAD Vs. COMMISSIONER OF Income Tax,

U. P. AND AJMER MERWARA, LUCKNOW., . Malik, C.J., who delivered this judgment also after referring to the several cases stuck to the

view that if income accruing from a branch of an assessee's business could not be taken into account in computing his profits for the purpose of

tax, losses incurred by him in such branch had also to be excluded. The learned Chief Justice after referring to the several provisions and the

decisions by the other High Courts said:

There is, therefore, no reason why he (the Income Tax Officer should, in making a computation for tax purposes, take into account losses incurred

at Jaipur. For tax purposes computation of neither the profit nor the loss at Jaipur will be relevant u/s 10 of the Act, though for the purpose of

determining the rate such income or such loss may be relevant.

Reading these sections together the result appears to us to be that in computing the income for rate purposes the Income Tax Officer may have to

take into account the profits made in an Indian State and may also have to deduct the losses sustained there, but in computing the income for tax

purposes neither the profits made nor the loss incurred in an Indian State can be taken into account.

He therefore saw no reason to differ from his earlier decision in In Re: Income Tax Assessment of Misrimal Gulabchand of Beawar for the year

1944-45, . With due respect to the learned Chief Justice we are unable to agree with this construction of Section 10 or Section 14(2)(c). We are

clearly of the opinion that the construction adopted by the other High Courts is the correct one.

16. In this view our answer to the question in R.C. No. 47 of 1951, R.C. No. 48 of 1952 and the second question in R.C. No. 1 of 1952 is in the

affirmative and in favour of the assessee. In the view we have taken it is unnecessary to answer the first question referred to us in R.C. No. 1 of

1952. Each of the assessees in these references will be entitled to his costs.

Counsel's fee Rs. 350.