

(1949) 10 AHC CK 0039

In the Allahabad High Court

Case No : Misellaneous Case No. 370 of 1948

MISHRIMAL GULABCHAND OF BEAWAR, IN RE.

Date of Decision : 26-10-1949

Acts Referred:

Income Tax Act, 1961 — Section 16(1)(c), 24(1)

Citation : (1950) 18 ITR 75

Hon'ble Judges : Malik, C.J;Seth, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

MALIK, C.J. - The facts of this case are very simple. The assessee, Mishrimal Gulabchand, is a Hindu undivided family doing business at Beawar Ajmer-Merwara. The relevant assessment year is 1944-45. In the relevant account year the assessee was a resident and ordinarily resident in British India. The assessee had speculated individually and in partnership in various commodities in British India and also in Indian States. From its individual business carried on in British India the assessee had made a profit of Rs. 38,473, while from its individual business in the Indian States it suffered a loss of Rs. 25,391. In computing the total income from business of the assessee the Income Tax Officer did not debit the loss suffered in Indian States. This decision was upheld by the Assistant Income Tax Commissioner. On appeal the Appellate Tribunal reversed the decision of the Income Tax Commissioner and held that the proviso to Section 24(1) of the Act did not apply. On an application made by the Income Tax Commissioner the Tribunal had made this reference on two points :-

(1) Whether in the circumstances of the case the sum of Rs. 25,391 should have been ignored in determining the assessee's income from business in the previous year relevant to the assessment year 1944-45, or whether that sum should have been deducted from the assessee's income from business in the previous year relevant to the assessment year 1944-45 ?

(2) Whether the first proviso to Section 24(1) of the Indian Income Tax Act could apply to assessment made for the year 1944-45 ?

The second question was referred to us at the instance of the assessee as the account year 1943-44 ended on the 31st of March, 1944, and the first proviso to Section 24(1) did not come into force till the 12th of April, 1944.

Taking up the second question first, the point appears to me to be concluded by the decision of their Lordships of the Judicial Committee in *Maharajah of Pithapuram v. Commissioner of Income Tax, Madras*.

It has been urged by Mr. Das on behalf of the department that it was the law in force at the time of assessment which governed the assessment of a particular year and not the law as it was during the year in which the income was earned. Learned counsel has cited in support of this contention two cases : (1) *Commissioner of Income Tax, Bombay v. Sind Hindu Provident Funds Society*, and (2) *Commissioner of Income Tax, Madras v. Maharajah of Pithapuram*.

In the case of *Commissioner of Income Tax, Bombay v. Sind Hindu Provident Funds Society*, the Chief Court of Sind held that the Government notification published on the 4th April, 1936, which limited the exemption of interest on securities purchased through the Post Office to Rs. 22,500 was applicable to an assessment levied on 28th October, 1937, even though the income assessed was for the year ended 31st March, 1936. The Judge relied on the facts that an assessment in 1936-37 based upon the income of 1935-36 would be determined not upon the rates in force in 1935-36 but the rates in force in 1936-37. This is perfectly correct but the point what would be considered to be the rate in force in 1936-37 when there was a change made in the middle of the year does not seem to have been considered by the learned Judges.

In the case of *Maharajah of Pithapuram* the question was whether the provision of Section 16(1)(c) of the Indian Income Tax Act, as amended by the Amendment Act of 1939, was to be applied, or the law prior to the amendment. The account year was 1938-39 and the claim of the assessee was that the law prevailing in the account year when the profits were made was the law applicable. It was pointed out by a Full Bench of the Madras High Court that in the year of assessment 1939-40 the Amending Act had come into force and the law in force at the time of assessment must govern the assessment and not the law in the previous year in which the income was earned. The Amending Act VII of 1939, had received the assent of the Governor General on 17th February, 1939, and was published in the Government of India Gazette dated 25th February, 1939, and had come into force on the 1st April, 1939. The Privy Council affirmed the decision of the Madras High Court. (See *Maharajah of Pithapuram v. Commissioner of Income Tax, Madras* Their Lordship of the Judicial Committee observed as follows :-

"It should be remembered that the Indian Income Tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. This may be illustrated by pointing out that there was no

charge on the 1938-39 income either of the appellant or his daughters, nor assessment of such income, until the passing of the Indian Finance Act of 1939, which imposed the tax for 1939-40 on the 1938-39 income and authorised the present assessment. By sub-section (1) of Section 6 of the Indian Finance Act, 1939, Income Tax for the year beginning on the 1st April, 1939, is directed to be charge at the rates specified in Part I of Schedule II, and rates of super-tax are also provided for, and by sub-section (3) it is provided that for the purpose of this section and of Schedule II, the expression "total income" means total income as determined for the purposes of Income Tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income Tax Act, 1922. This can only refer to the Indian Income Tax Act, 1922, as it stood amended at the date of the Indian Finance Act, 1939, and necessarily includes the alterations made by the Amending Act, which had already come into force on the 1st of April, 1939."

Similar provisions are contained in Section 6 of the Finance Act of 1944, and on a parity of reasoning the law applicable on the 1st of April, 1944 the assessment year being 1st of April, 1944, to 31st of March, 1945, would be the law applicable. The answer to the second question must, therefore, be that the first proviso to Section 24(1) of the Indian Income Tax Act does not apply to assessment made for the year 1944-45.

That being our answer to the second question, it necessarily follows that we are not called upon to consider, in answering the first question, the arguments advanced by learned counsel that the first proviso to Section 24(1) enlarges the scope of sub-section (1) to Section 24. The Bombay High Court in *Commissioner of Income Tax, Bombay v. Murlidhar Mathurawalla Mahajan Association* has held that sub-section (1) so Section 24 deals with the right of an assessee, who has suffered a loss under one of the head enumerated in Section 6, to set off that loss against a profit made by him under a different head u/s 6. The learned Judges held that this proviso can have no application unless the section itself is applicable and the proviso does not, therefore, apply unless the loss under one head is attempted to be set off by a profit under another head. It is not necessary for us to consider whether Section 24 was not intended to include the whole law of set-off and whether the proviso can apply even though the main sub-section to which it is a proviso is not applicable.

The first proviso to sub-section (1) of Section 24 being, therefore, out of the way, we have to consider whether in the circumstances of the case the loss of Rs. 25,391 suffered in an Indian State should or should not have been ignored in determining the assessee's income from business in the previous year. Section 6 of the Indian Income Tax Act divides the various heads of income, profits and gains, one of the heads being profits and gains of business, profession or vocation. Prior to the provision as to set-off in the Act of 1922, loss under one head could not be set off against the profits under another head. For the purposes of Income Tax the income under each head was added in arriving at the aggregate amount of the income chargeable to tax and if there was loss under

any head, profits shown were entered as nil and not the minus figure of the loss. Section 24(1) was, therefore, enacted to provide for adjustment of losses under one head of income against the profits under another head. Profits and gains of business, profession or vocation were taken as one head and if the assessee carried on several business or had along with it a profession or a vocation, u/s 10 of the Income Tax Act in preparing the balance sheet the result naturally was shown, as the total profits and gains, after the losses had been deducted. It was, therefore, not necessary to make provision similar to the provision in Section 24(1) for setting off all losses against profits made under the same head, as, whatever may be the nature of the business, the Income Tax Officer had to take the result of the various types of business, profession or vocation carried on by the assessee and he could not, therefore, ignore the losses in calculating the profits and gains under clause (iv) of Section 6. u/s 14(2)(c) an exception was made in respect of any income, profits or gains accruing or arising to an assessee within an Indian State and it was provided that it shall not be taxable unless such income, profits or gains are received or deemed to be received in or brought into British India in the previous year by or on behalf of the assessee or are assessable u/s 42 of the Income Tax Act. u/s 42 certain income, profits and gains accruing outside British India of certain non-residents were made taxable if such income arose out of business associations with persons in British India or by a reason of property in British India. Clause (c) of sub-section (2) of Section 14 of the Income Tax Act together with the corresponding addition in Section 17 were introduced in 1941, while the first proviso to sub-section (1) of Section 24 of the Income Tax Act was not added till the 12th of April, 1944.

It is a well settled principle of law that no assessee can claim a set-off or deduction unless he can show some provision of law under which the deduction can be allowed. Mr. Das, on behalf of the Commissioner of Income Tax, has urged that if the first proviso to Section 24(1) is not applicable then there is no other provision under the Income Tax Act under which the assessee can claim a set-off of losses incurred by him outside British India. In calculating the profits and gains under the fourth head of Section 6, the Income Tax Officer has to prepare a balance-sheet of the result of the working of such businesses with which the Income Tax Officer is concerned and, if he is not concerned with profits of a business carried on in an Indian State, he is obviously not concerned with the losses of that business, so that if the profits of the business cannot be added the losses of the business cannot be deducted either. This result seems to me to be obvious. Sub-section (1) of Section 24 of the Income Tax Act can only apply to the set-off of a loss under one head against income under another head. Section 10 provides as follows :-

"The tax shall be payable by an assessee under the head Profits and gains of business, profession or vocation in respect of the profits or gains of any business, profession or vocation carried on by him."

Sub-section (2) then goes on to set out the method of computation of such

profits or gains and the allowances to be made for the purpose. The other sub-sections of Section 10 make similar provisions explaining the method of computing the profits and gains and how it is to be done. Section 10, therefore, primarily concerns itself with the income of the assessee in respect of which the Income Tax payable. That section must be read along with clause (c) of sub-section (2) of Section 14 which exempts income, profits and gains arising to the assessee within an Indian State, unless such income, profits or gains received or deemed to be received in British India, or brought into British India in the previous year by or on behalf of the assessee. If such income becomes taxable by reason of the fact that it is received in British India, or brought into British India, in the previous year, to my mind, it would become "an income from other sources" rather than "an income from business." Be that as it may, on the facts stated in the statement of the case that the assessee had made a profit of Rs. 38,473 from business in British India, and had suffered a loss of Rs. 25,391 from its business in Indian States and on the finding that the first proviso to section 24, sub-section (1), is not applicable and in the view that I have taken that neither sub-section (1) to Section 24, nor Section 10 of the acts helps the assessee the reply to the first question must be in the affirmative and the loss of Rs. 25,391 should be ignored in determining the assessee's income from business in the previous year.

In this case, as in most other cases, that have recently come up before us, the paper book consists of only the statement of the case. It is true that this court is not a Court of appeal on facts and must, therefore, take the facts as found by the Tribunal and consider the question of law on the basis of the findings of fact arrived at by the Tribunal. It is true also that the draft statement of the case is sent to the assessee for objection and the objections raised by him are considered by the Tribunal before the final statement of the case is prepared. In considering the cases that have recently come up before this Court, I have felt the necessity of fuller statements of the case analysing and setting out the findings of facts recorded by the Tribunal on which the question of law is said to arise. It would be, to my mind, much more helpful if in the statement of the case the findings of fact are analysed as far as possible in the language used by the Income Tax Tribunal in its appellate order. The Tribunal's appellate order should be either included as a part of the statement of the case or, at any rate, its relevant findings incorporated in its own words in the Statement of the case. On behalf of the assessee it was urged before us that the statement of the case does not contain correct facts inasmuch as the case assessee has only one business in British India and no business at all in the Indian States and all his business is carried on from Ajmer where the profits and losses of all his business carried on in British India or outside British India are all entered. When the statement of the case was, however, sent to the assessee he did not raise any such objection to the statement nor did he apply before us for a further statement. It was in the course of the argument after we had heard learned counsel for the Commissioner of Income Tax that this point was mentioned by learned counsel for the assessee.

We cannot, in disregard of the facts stated in the statement of the case, take notice of this objection at this late stage.

The assessee must pay the cost of this reference which we assess at a sum of Rs. 400.

SETH, J. - I agree that the first question should be answered in the affirmative and the second in the negative, and have nothing to add to what has been said by my Lord the Chief Justice in answer to the second question.

So far as the first question is concerned, it is conceded that the assessee is not entitled to claim that the losses incurred in the business in the Indian States should be set off against the income from business in British India u/s 24(1) of the Indian Income Tax Act, for that section applies only when losses sustained under one head are sought to be set off against income, profits and gains under some other head and not under the same head, mentioned in Section 6 of the Act. In this case the losses which are sought to be set off have both arisen under the same head business. There is no other section of the Income Tax Act, which provides for the set-off of losses against profits.

The submission on behalf of the assessee, however, is that in computing the assessable income of the assessee under the head "business" u/s 10 of the Act, the losses incurred in the Indian States should be taken into account and the assessable income from business should be determined by deducting the losses incurred in business in the Indian States from the income from business carried on in British India. The learned counsel for the assessee submits that section 10 makes no distinction between business carried on in British India and business carried on in an Indian State and contemplates and ascertainment of profits and gains from all the business activities of an assessee wheresoever carried on. With regard to Section 14(2)(c) of the Act, the learned counsel submits that it comes into play only when the business activities in an Indian State have resulted in profit, and has no application where such activities have in loss. To put it in other words, the contention of the learned counsel is that, in computing the assessable income of an assessee from all of his business, all the profits and losses, resulting to the assessee from all of his business activities, wheresoever carried on, are to be consolidated into one account and the assessable profits and gains are to be calculated therefrom, with this exception and with this exception only, that if the business activities in Indian States have resulted in profits such profits are not to be brought into the account.

In my opinion, this contention is not well founded, for it is based upon a misconception of the nature and scope of Section 14(2)(c). Section 65 lays down six heads under which the income of an assessee is to be assessed for the purposes of taxation, and Section 7 to 12B provide how the income under these various heads is to be assessed. These sections are followed by Section 14, which is in the nature of a proviso, or an exception, to all these sections and deals with exemptions of general nature. Section 10 has, therefore, to be read

along with Section 14(2)(c). The relevant portions of these two sections may be quoted as follows :-

"Section 10(1). - The tax shall be payable by an assessee.....in respect of the profits and gains of any business....carried on by him."

"Section 14(2)(c). - The tax shall not be payable by an assessee in respect of any income, profits or gains accruing or arising to him within an Indian States....."

The result of combining these two sections may be expressed thus : The tax shall be payable by an assessee on profits and gains of business carried on by him outside Indian States.

It is thus manifest that an assessee is liable to pay tax on all profits and gains from business carried on outside Indian States, and it is equally manifest that in ascertaining profits and gains from such business, a consideration of losses incurred in business carried on in an Indian State is absolutely irrelevant. I am, therefore, of the opinion that the loss of Rs. 25,391 in the business carried on in Indian States should be ignored in determining the assessee's income from business in the previous year relevant to the assessment year 1944-45.

All that I wish to add to what has been said by my Lord the Chief Justice about the statement of case is, that it is extremely desirable that the statement of a case should contain not only the relevant conclusion of facts arrived at by the Tribunal, but that it should also contain all primary facts found, on which those conclusions are based. and that the statement of a case should have annexed to it at least the order passed on appeal by the Appellate Tribunal.

I concur in the order proposed.

Reference answered accordingly.