

In Re: Parasram Jethanand

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Court : Chennai

Decided On : Feb-15-1956

Reported in : (1956)2MLJ119

Appellant : In Re: Parasram Jethanand

Judgement :

Rajagopala Ayyangar, J.

1. These three references under Section 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 negated 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 v. Muralidhar Mathuravalla Association : [1948]16ITR146(Bom) . 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 Mishrimal Gulabchand of Beawar In re : AIR1950 All270 . On these facts, the assessee applied under Section 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 under Section 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 mundry 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 v. Murlidhar Muthurawalla Association : [1948]16ITR146(Bom) , 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 under Section 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'. Under Section 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 under Section 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 under Section 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 under Section 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 under Section 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 under Section 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 under Section 6 could be set off under Section 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 under Section 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 proviso 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 under Section 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 therefor 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 under Section 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 under Section 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 in 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. v. Commissioner of Income-tax* : [1953]4SCR448 .Bose, J., who delivered the Judgment of their Lordships said:

Next, a set-off under Section 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 under Section 10 and not under Section 24(1). See the decision of the Privy Council in *Rm. Ar. Ar. Rm. Arunachalam Chettiar v. Commissioner of Income-tax Madras* .

11. The decision of the Bombay High Court in *Commissioner of Income-tax v. Murlidhar, Mathurawalla Association* : [1948]16ITR146(Bom) ., 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 *M. & S.M. Ry. v. Bezwada Municipality* : (1945)47BOMLR587 , 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 under Section 10 of the Act and in order to determine what are the profits and gains of a business under Section 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 *Mishrimal Gulabchand of Beawar, In re* : AIR1950 All270 . 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 *Mohanlal Hiralal v. Commissioner of Income-tax* , and *Commissioner of Income-tax v. C.P. Syndicate* . 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 *Commissioner of Income-tax v. 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 v. Murlidhar Mathurawalla Association* : [1948]16ITR146(Bom) . 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 *Commissioner of Income-Tax v. Baliram Santhoba* , has also taken the same view.

15. The Allahabad High Court had to consider this question again in 1955 in *Raghunath Prasad v. Commissioner of Income-Tax* : [1955]28ITR45(All) . 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 under Section 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 *Mishrimal Gulabchand of Beawar, In re.* : AIR1950 All270 . 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.

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