

Commissioner of Income-Tax, Madhya Pradesh

Vs

Khushal Chand Daga

Civil Appeals Nos. 148 to 150 of 1960

(J. C. Shah, M. Hidaytullah, J. L. Kapur JJ)

07.03.1961

JUDGMENT

HIDAYATULLAH, J. –

These appeals, by special leave, have been filed by the Commissioner of Income-tax, Madhya Pradesh, against the assessee, an individual, by name Seth Khushal Chand Daga. The assessee was a partner in a firm, Messrs. R. B. Bansilal Abirchand of Nagpur. In the year of account ending Diwali, 1941, he received his share of assets and property from this firm and started business of his own. In the same year, his sources of income were speculation, allowance from Government as treasurer, house property and dividends. The assessee had received some profits from his share in an unregistered firm against which were set on his losses in his individual business, and the Income-tax Officer, who made the assessment, determined the loss to be carried forward at Rs. 53,840. The assessee appealed against the assessment, but did not question the loss which had been determined.

For the year 1942-43 the assessee claimed to reopen the question of the loss to be carried forward, stating that it was Rs. 2,11,760. This contention was not accepted by the Department, and on appeal by the Tribunal. The contention was, however, raised again by him in the assessments for the years 1948-49 and 1949-50. In these years, he had profits from his share in the unregistered firm, Rs. 1,82,773 and Rs. 1,39,922 respectively, against which were set off his losses in his individual business, Rs. 1,18,913 and Rs. 60,589 respectively. The contention of the assessee was that the profits which he had derived from the unregistered firm could not be set off against the loss in his individual business, as the profits of the unregistered firm has borne tax not in his hands but in those of the firm. This contention was rejected by the Department; but on appeal to the Tribunal, it was accepted. On the Tribunal being moved to make a reference, it referred four question. Two of those questions dealt with matters al

"(1) Whether the assessee was competent in law to raise a question with regard to the determination of loss for the assessment year 1941- 42 as finally determined in appeal, in the course of proceedings for the assessment year 1942-43 when the loss brought forward from 1941-42 was being set off ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the loss suffered by the assessee from his personal business (including his share of loss from another firm) cannot be set off under section 24(1) against his taxed share income from an unregistered firm ?"

These questions were answered by the High Court against the Commissioner, who has now

appealed, with special leave.

It was conceded by the learned counsel for the Commissioner that the second question has now been decided by this court in Seth Jamnadas Daga v. Commissioner of Income-tax and that the answer must be against the Department. That portion of the case was thus not argued.

As regards the first question, the only contention raised was that the loss which had been determined and ordered to be carried forward must be deemed to have become final, because no appeal was filed against the determination. But it appears that the procedure laid down by section 24(3) under which the Income-tax Officer has to notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of that section was not followed. No doubt, under section 30 an appeal lies, if the assessee objects to the amount of loss computed and notified under section 24; but in as much as the Income-tax Officer has not notified the loss computed by him by order in writing, an appeal could not be taken on that point. In our opinion the assessee was, therefore, entitled to have the loss re-determined in a subsequent year. Learned counsel for the Commissioner stated that the Department was not very anxious for the decision, because this particular assessee has had only losses in the years foll

The appeal fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

</html