

Commissioner of Income-Tax, Kerala

Vs

Helen Rubber Industries Ltd

Civil Appeal No. 466 of 1960

(CJI B. P. Sinha, J. L. Kapur, M. Hidayatullah, J. C. Shah, J. R. Mudholkar JJ)

16.01.1962

JUDGMENT

HIDAYATULLAH J. –

The Commissioner of Income-tax, Kerala and Coimbatore, has filed this appeal against the judgment and order of the High Court of Kerala dated October 31, 1958, by which the High Court answered in favour of the respondent (Helen Rubber Industries Ltd., Kottayam) the following question :

"Whether under the provisions of the Indian Income-tax Act the petitioner is entitled to carry forward the loss for a period of six years notwithstanding the fact that during the period when the loss had occurred, the law applicable was the Travancore Income-tax Act ?"

The High Court has granted a certificate under section 66A (2) of the Income-tax Act. Two questions were referred to the High Court in compliance with an earlier order of the High Court under section 66 (2); but with the other question, we are not concerned in this appeal.

Messrs. Helen Rubber Industries Ltd. is a company, which was incorporated in the former State of Travancore with its registered office at Kottayam. In the year 1941, the assessee company granted a lease of the factory to certain persons for a period of fifteen years. From that year, the rent and royalty received from the leases were the only source of income. Disputes having arisen, the lessees suspended payment from June, 1946. Litigation followed; but the dispute was settled by the assessee company receiving Rs. 23,000 odd in full satisfaction. With the details of these disputes and their settlement we are not concerned. The year of account of the assessee company is the calendar year. Before the extension of the Indian Income-tax Act, there was in force in Travancore State, the Travancore Income-tax Act, which came into force on the first day of Chingom 1122 M. E. (August 17, 1946). The assessment year under the Travancore Act ended on the last day of Karkadakom which corresponds to August 16, 1947. Thus,

The assessee company declared losses in the account years, 1946, 1947 and 1948. These losses together with the dates of the account years and the assessment years are tabulated below.

#	Year of account	Year of assessment	Loss
	1946 (1-1-1946 to 1123 M. E. (17-8-1947 Rs. 31-12-1946) to 16-8-1948)	4031-10-01947 (1-1-1947 to 1124 M. E. (17-8-1948 31-12-1947) to 16-8-1949)	6605-1-61948 (1-1-1948 to 1125 M. E. (17-8-1949 31-12-1948) to 16-8-1959)

The dispute in this case is about the right of the assessee company to carry forward the loss of the year 1946 under the provisions of the Travancore Act read with section 24 (2) of the Indian Income-tax Act and the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, to the assessment year, 1951-52, in the assessment of the company for its year of account, the calendar year, 1950. The Income-tax Officer held that the loss of the year 1946 could not be carried forward to that year, since it had lapsed after two years under section 32 of the Travancore Act, and section 24 (2) was not applicable, in view of paragraph 3 of the order, mentioned above. The order of the Income-tax Officer was confirmed in appeal by the Appellate Assistant Commissioner and the Appellate Tribunal. The Tribunal was moved for a case, but declined to state one; but the High Court called for a statement of the case under section 66 (2) and the above-mentioned question argued in this appeal is whether the High Court was r

The Indian Income-tax Act was extended to Travancore-Cochin by section 3 of the Indian Finance Act, 1950. By section 13 (1) of the same Act, it was provided :

"If immediately before the 1st day of April, 1950, there is in force in any Part B State.... any law relating to income-tax..... that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax.... in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922 (XI of 1922), for the year ending on the 31st day of March, 1951, or for any subsequent year...."

By this section, a clear division was made between the operation of the prior law and the Indian Income-tax Act. The assessment for the year 1951-52 was thus made on the assessee company under the Indian Income-tax Act. Under section 24 (2) of the Indian Income-tax Act, as it existed prior to its amendment by the Finance Act, 1955, it was provided :

"Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head 'Profits and gains of business, profession or vocation', and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year,... and so on, but no loss shall be carried for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively shall be carried forward only for one, two, three, four and five years respectively."

Since we are concerned with the loss for the year, which does not correspond to the years named in the latter part of the section above-quoted that part of the section does not apply to the assessee company's case. What was thus claimed was the benefit of the earlier part, where the loss was allowed to be carried forward for six years.

This position taken by the assessee company can hardly be considered in view of the provisions of section 32 of the Travancore Act, read with the Removal of Difficulties Order passed in 1950. Section 32 of the Travancore Act was a reproduction of the Indian section 24 (2) except for a change of the dates mentioned therein, due obviously to the fact that the Travancore Act came into

force on the first day of Chingom, 1122 M. E. (August 17, 1946). It is enough to point out that instead of "31st March", wherever they occurred, the words "the last day of Karkadakom" (August, 16) were substituted, and instead of the years, 1940, 1941, 1942, 1943 and 1944, were substituted the Malayalam years 1122 (August, 1946 to August 16, 1947), 1123 (August 17, 1947 to August 16, 1948), 1124 (August 17, 1948, to August 16, 1949), 1125 (August 17, 1949 to August 16, 1950) and 1126 (August 17, 1950) to August 16, 1951). These were the only difference between the two sections, and section 24 (2) of the Indian Income-tax Act, so m

The existence of these two sections in two Acts was likely to lead to some difficulty, and a question was likely to arise which law was to prevail. Section 12 of the Indian Finance Act, 1950, therefore, enabled the Central Government to pass an order removing any such difficulty. The Taxation Laws (Part B States) (Removal of Difficulties Order, 1950, was thus passed. Paragraph 3 of that Order Provided :

"3. Carry forward and set-off of previous losses. Where in any previous year prior to the previous year for the assessment for the year ending on the 31st day of March, 1950, an assessee has sustained a loss of profits or gains in any business, profession for vocation carried on by him, and such loss would, had the State law continued to be in force, have been set off against the profits and gains, if any, from the same business chargeable to tax in the said year of assessment or in any year subsequent thereto, such loss would be so set off in the same manner, to the same extent, and up to the same year of assessment, as it would have been set off had the State law continued to be in force."

The critical words are those contained in the latter part, namely, "in the same manner, to the same extent, and up to the same year of assessment, as it would have been set off had the State law continued to be in force." They show that the law to apply to the loss of "any previous year prior to the previous year for the assessment for the year ending on the 31st day of March, 1950," was the law in force in a Part B State-here, the Travancore Act. The previous year of the assessee company for the assessment year ending 31st day of March, 1950, would be the calendar year, January 1, 1949, to December 31, 1949. To that, the Indian Income-tax Act would apply. The application of the Travancore Act by paragraph 3 of the Order was limited to the previous year before January 1, 1949, and other earlier previous years. The previous year, with which we are concerned, January 1, 1946, to December 31, 1946, is so clearly a previous year, to which the Travancore Act applies, that it does not admits of any doubt or differ

The Travancore Act laid down, inter alia, that a loss arising in the previous year for the assessment for the year ending on the last day Karkadakom, 1123, could be carried forward for two years. The assessment years for 1123 M. E. covered the period, August 17, 1947, to August 16, 1948, and the previous year of the assessee company relative to that assessment year was January 1, 1946, to December 31, 1946. The loss of the calendar year, 1946, could be carried forward to the calendar years, 1947 and 1948 and given effect to, till the assessment year, 1125 (August 17, 1949, to August 16, 1950). The assessment year April 1, 1951, to March 31, 1952, correspond to the account year of the assessee company, January 1, 1950, to December 31, 1950, and that is beyond two years, whether one takes the account year or the assessment year as the basis of the calculation of two years.

The High Court, with all due respect, was not right in thinking that the Removal of Difficulties Order, 1950, was meant to enlarge the rights of the new assessee brought within the reach of the

Indian Income-tax law. The intention of the law was to make a dividing line between to see previous year to which the provisions of the earlier law would apply, and those previous years to which the provisions of the Indian Income-tax Act would apply. The rights were neither enlarged not curtailed. As pointed out by Chagla C.J. in Indore Malwa United Mills Ltd. v. Commissioner of Income-tax :

".... the only right integration has given to an assessee is the right contained in clause 3 of the Removal of Difficulties Order, 1950 and that right is that if the law of this own State permitted him to carry forward the losses, then that right is preserved under the Indian Income-tax Act."

Paragraph 3 of the Order clearly said that the right was available in the same manner, to the same extent and up to the same year of the assessment, as laid down in the State law (here, the Travancore Act). Since, in this case, the carry-forward of the loss was for only two years, and those years were before the previous year from which the Indian Income-tax Act began to apply, there is no question of the application of the Indian Income-tax Act.

The appeal thus succeeds, and is allowed. The assessee company shall pay the costs of the appeal in the High Court, but there shall be no order about costs in this court.

Appeal allowed.

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