Commissioner of Income-Tax, Madras

Vs

Prithvi Insurance Co. Ltd.

Civil Appeal Nos. 729 - 732 of 1965

(J. C. Shah, V. Ramaswami-I JJ)

26.10.1966

JUDGMENT

SHAH, J.

The respondent, a public limited company, carried on in the relevant years of account business of insurance - life and general. In each of the calendar years 1944 to 1948 relating to the assessment years 1945-46 to 1950-51, the Company suffered loss in the life insurance section, and made profit in the general insurance section. Till the assessment year 1950-51 the loss suffered in the life insurance section was allowed by the Revenue authorities to be carried forward and set off under s. 24(2) of the Indian Income-tax Act, 1922, against profits from the general insurance section in the subsequent year. In proceedings for assessment for the assessment year 1951-52, the Income-tax Officer held that the life insurance business and the general insurance business carried on by the Company were "distinct and separate" and the loss carried forward from the previous year in respect of life insurance business could not be set off under s. 24(2) against the profit of the general insurance business. The Appellate Assistant Commissioner and the Tribunal confirmed the view of the Income-tax Officer. The Tribunal referred the following question to the High Court of Madras under s. 66(1) of the Income-tax Act :

> "Whether the unabsorbed losses incurred by the assessee in the earlier years in its life insurance business are available to be set off against its profits from general insurance business for the assessment years 1951-52 to 1954-55 ?"

The High Court answered the question in the affirmative. With certificate granted by the High Court, these appeals have been preferred by the Commissioner of Income-tax.

The order of the Income-tax Appellate Tribunal summarises the reasons which persuaded the Departmental authorities to reject the claim of the Company. The Tribunal states :

> "The business of life insurance possesses peculiar characteristics which do not exist in respect of other insurance businesses. Firstly, the life insurance policies are not contracts of indemnity; they are forms of investments. Other classes of insurance business are contracts of indemnity. Secondly, the contract in the general insurance is generally annual, while in the case of life business the risk continues until death. Unlike general insurance contracts, the life contract, is made once and for all. The general insurance contracts, are in law, fresh contracts entered into at the time of each renewal. Thirdly, life business is controlled by principles essentially variant from those which control the general insurance business. Fourthly, the life preima do not

represent the life profits nor can the total amount of claims arising in one year be set off as a deduction. Fifthly, the law under which life business is carried on is quite different from the laws governing general business; and lastly, assessable profits of life business shall be computed separately from those of the general business, the consequence of which would be that the carry forward of loss of life business cannot be had against the profit of general business."

Tax payable by an assessee under the head "Profits and gains of business, profession or vocation" is normally computed under s. 10(1) of the Income-tax Act, 1922, after making allowances mentioned in sub-s. (2) of s. 10. But sub-s. (7) of s. 10 provides that notwithstanding anything to the contrary contained in ss. 8, 9, 10, 12 or 18 of the Act, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to the Act. The Schedule is headed "Rules for the computation of the Profits and Gains of Insurance Business". By r. 1 it is provided that in the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business. By r. 2 it is provided :

"The profits and gains of life insurance shall be taken be to either :-

(a) the gross external incoming of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus arrived at by adjusting the surplus or deficit, disclosed by the actuarial valuation made in accordance with the insurance Act, 1938 (IV of 1938), in respect of the last inter-valuation period ending before the year for which the assessment is to be made, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for the computing the profits and gains of a business, whichever is the greater :

#Provided. . . . . ."##

Rules 3 and 4 lay down the methods of computing the surplus for the purpose of r. 2. Rule 5 is a definition clause. Rule 6 deals with the computation of profits and gains of any business of insurance other than life insurance, and provides that the profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of s. 10 of the Act be allowed for in computing the profits and gains of a business. Rule 7 deals with the computation of profits and gains of companies carrying on dividing societies or assessment business. Rule 8 deals with the computation of profits of non-resident insurance companies having branches in the taxable territory. Rule 9 provides that the profits of any business carried on by a mutual insurance association or by a co-operative society shall be computed in accordance with the rules.

Computation of the assessable income of an assessee carrying on business of life insurance or general insurance has therefore to be made in accordance with the rules and not by determining the profits under sub-s. (1) of s. 10 after making allowances under sub-s. (2)

Where an assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he is entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year : [s. 24(1)]. Therefore in determining the taxable profits, the net balance under the same head mentioned in s. 6 has to be taken into account, and if there be loss under a head of income (subject to the special exception relating to admissibility of loss from speculative business), that loss has to be set off against the income, profits or gains under any other head. Sub-s. (1) does not however deal with carry forward to the following year of loss suffered by the assessee as a result of computing the total income from all the heads. That is dealt with under sub-s. (2). Section 24(2) as it stood at the material time, 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, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; . . ."

The words italised were substituted by the Income-tax Amendment Act 25 of 1953, for the words "under the head 'Profits and gains of business, profession or vocation'" and "the portion not so set off" respectively. At the relevant time loss which could not be set off in the year of account may be carried forward to the following year, but it could be set off against the profits and gains of the assessee from "the same business, profession or vocation". If the loss carried forward from the previous year and sought to be set off was not from the same business, profession or vocation, it could not be set off under s. 24(2). If there was no income or profits from the same business in the subsequent year the loss could not be set off, but had to be carried forward in the next year following, subject to the restriction placed in that sub-section.

The question whether the business of life insurance and the business of general insurance could be regarded as the same business assumes importance in this case, since the right to carry forward the loss suffered in the life insurance business and to set it off against the profit of the company in the general insurance business of the subsequent year is clearly in issue. If the life insurance business and the general insurance business were not "the same business" within the meaning of s. 24(2), loss in the life insurance business which could not be set off against income from other businesses of the Company and sources of income, could not be carried forward and set off in the year following against the income from the general insurance business.

Counsel for the Commissioner contended that life insurance business and general insurance business were separate businesses and he relied in support of that contention primarily upon the method of computation of taxable income of the life insurance business and of the general insurance business. Both in respect of the life insurance business and general insurance business, there are, as already mentioned, special methods of computation of income. But because there are distinct methods of computation of taxable income of the insurance business, and the general provisions of the Income-tax Act relating to computation of profits and gains of a business in s. 10 and the related sections are inapplicable, it does not follow that the two businesses cannot be the "same business" within the

meaning of s. 24(2). Whether two or more lines of businesses may be regarded as the "same business" or different businesses depends not upon the special methods prescribed by the Income-tax Act for computation of the taxable income, but upon the nature of the businesses, the nature of their organisation, management, the source of the capital fund utilised, methods of book-keeping and a host of other related circumstances which stamp the businesses as same or distinct.

In the present case, there is little doubt that the two businesses constituted one composite business : the Company was entitled to carry on the life insurance business and the general insurance business under its Memorandum of Association, and the businesses were attended to by the Branch Managers and the Agents without any distinction, there was one common administrative organization and the expenses incurred in connection with the business both for administration and for heads of expenditure such as salary of the staff, postage, staff welfare fund and general charges, were common.

We are unable to agree with counsel for the Commissioner that the test whether one of the businesses can be closed without affecting the conduct of the other business, is a decisive test in determining whether the two constitute the same business within the meaning of s. 24(2). If one business cannot conveniently be carried on after the closure of the other, there would be a strong indication that the two businesses constitute "the same business", but no decisive inference may be drawn from the fact that after the closure of one business another may conveniently be carried on.

In the present case the Tribunal's judgment proceeds not upon any special circumstances governing the distinctive organization, management, accounts, methods of book-keeping or the peculiarities of the two businesses, but primarily upon the provisions of the Income-tax Act which provide different methods of computation of the taxable income of the life insurance business and of the general insurance business. We are unable to agree with the Tribunal, that because in respect of the life insurance business and general insurance business there are special methods of computation of income for the purpose of levying income-tax, they are not the "same business" within the meaning of s. 24(2). A fairly adequate test for determining whether the two constitute the same business is furnished by what Rowlatt, J. said in Scales v. George Thompson & Co. Ltd. [13 T.C. 83, 80] :

> "Was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses ?"

That inter-connection, interlacing, inter-dependence and unity are furnished in this case by the existence of common management, common business organisation, common administration, common fund and a common place of business.

In our view therefore the High Court was right in holding that the life insurance business and the general insurance business constitute the same business within the meaning of s. 24(2) of the Act.

The appeals therefore fail and are dismissed with costs. One hearing fee.

G.C.

Appeal dismissed.

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