Hooghly Trust (Private) Ltd

Vs

Commissioner of Income-Tax, West Bengal and Andaman & Nicobar Islands

Civil Appeals Nos. 1659 to 1661 of 1968

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

04.02.1969

JUDGMENT

GROVER J. -

These there appeals are by certificate from a common judgment of the Calcutta High Court answering the following question referred to it by the Income-tax Appellate Tribunal in the negative and against the assessee :

> "Whether, on the facts and in the circumstance of the case, the cloth business of the assessee and its business in the general section constituted the same business within the meaning of section 24(2) of the Indian Income-tax Act as it stood at the material time ?"

According to the statement of the case the assessee is a private limited company owning shares had securities and also doing business. The relevant assessment years are 1955-56, 1956-57 and 1957-58, the corresponding accounting years being the calendar years 1954, 1955 and 1956. In the assessment for the years 1953-54 and 1954-55 losses amounting to Rs. 2,13,898 and Rs. 46,050 respectively were determined for the purposes of section 24(2) of the Income-tax Act, 1922, hereafter called "the Act". In the first year a loss of Rs. 2,08,686 arose in cloth business whereas the balance of the loss occurred in the general section and the manure section. In the second year a loss of Rs. 46,050 occurred mainly in cloth business. During the three assessment years in question the Income-tax Officer refused to allow the carry forward of these losses and their set-off against the business profits of those years on the ground that the losses determined in the preceding years arose out of the cloth business which was differe

The High Court referred to certain other facts and found by the Appellate Assistant Commissioner. It had been found by him that the assessee was mainly doing banking business from 1942 to 1948 although it had, during that period, income from other sources. In the year 1948 it stated acting as the distributing agent of cloth on behalf of the Government. That business continued till the year 1952 when control on cloth was lifted. The assessee disposed of, in retail, stocks left over during the first view months of the year 1953. Thereafter, the assessee ceased to have any dealings in cloth. The High Court quoted extensively from the order of the Appellate Assistant Commissioner. It felt that the Tribunal had not dealt with the matter in a satisfactory way. Reference was made to its own decision in another case in which it had been held by the High Court that in order to find out whether the business of an assessee was the same in two different years the primary consideration was the nature of the business and

> "In our opinion, (i) the inference drawn by the Appellate Tribunal was not warranted by the facts on record, and (2) the cloth business was separate from the assessee's business in general section notwithstanding that there was some inter-connection of expenses or control."

In order to decide the points raised before us it is necessary first to refer to the relevant provisions of the Act. Section 6 gives six heads of income, profits and gains which shall be chargeable to income-tax. Out of these the fourth head is "profits and gains of business, profession or vocation". Section 10 taxes the profits of business, profession or vocation carried on by the assessee. Section 24(1) provides that where any assessee sustains a loss of profits or gains for 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. (It is unnecessary to refer to the proviso and the Explanations). Prior to its amendment by the Finance Act, 1955, sub-section (2) of section 24 ran as follows :

> "(2) 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 a 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;................"

Sub-section (2) of section 24 was substituted by section 16 of the Finance Act of 1955, the material portion for our purposes being :

> "(2) 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, in 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section (2), 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....
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> (ii) where the loss was sustained by him in any other business, profession or vocation, it shall be set off against the profits and gains if any, of any business, profession or vocation carried on by him in that year : provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year; and........."

The argument before us has proceeded on the footing that the matter has to be decided under sub-section (2) as it stood before its amendment in 1955. The principal contentions on behalf of the appellant-assessee are two-fold. It is urged firstly that the findings on questions of fact given by the Tribunal were final and it was not open to the High Court to examine their correctness in the absence of any proper question on the point. Secondly, on the findings of the Tribunal the losses on accounts of cloth business were liable in law to be carried forward and set off against the profits during the relevant assessment years. On the other hand, counsel for the respondent maintains that it was open to the High Court to prefer the findings of the Appellate Assistant Commissioner to those of the Tribunal because the Tribunal had based its conclusions of a misreading of evidence and on a consideration of irrelevant evidence. Counsel further says that the Tribunal's decision was hardly a

decision in the eye of law a

> "No doubt, findings of fact are involved, of because a variety of matters bearing on the unity of the business have to be investigated, such as unity of control and management, conduct of the business through the same agency, the inter-relation of the business, the employment of same capital, the maintenance of common books of account, employment of same staff to run the business, the nature of the different transactions, the possibility of one being closed without affecting the texture of the other and so forth. When, however, the true facts have been determined, the ultimate conclusion is a legal inference from proved facts, and it is one of mixed law and fact, on which depends the application of section 24(2) of the Act."

It is not possible to accept the submission made on behalf of the respondent that, in spite of the from in which the question had been refereed, it was open to the High Court to examine the correctness of the conclusions of the Tribunal on facts. There can be no dispute that, if the Tribunal does not consider the evidence covering all the matters and bases its findings upon some evidence only ignoring other essential material, that would amount to a misdirection in law and the findings would give rise to a question liable to be referred to the High Court. But it is equally well settled that, if it is sought to raise the question about the validity of the findings on fact for one reason or another, reference of a proper question challenging those findings must first be sough before those findings can be challenged before the High Court : see India Cements Ltd. v. Commissioner of Income-tax and Hazarat Pirmahomed Shah Saheb Roza Committee v. Commissioner of Income-tax. No attempt was made before the Tribunal t

The Tribunal gave the following findings : (1) The appellant's dealings in cloth started as early as 1946 and the introduction of control only changed the procedure of carrying on the business in the sense that the appellant became the nominated buyer approved by the Government. (2) The Appellant had been doing business in several commodities one after the other or along with the other and its trading in each commodity did not constitute separate business. (3) The cloth business never assumed the proportion or the stature of a distinct and separate business. (4) There was sufficient evidence to show dovetailing of the cloth section into the general section. The conclusion of the Tribunal on these findings was that the transactions in cloth were part and parcel of a single business carried on by the appellant and did not constitute a distinct business for the purpose of section 24(2). The Tribunal does not appear to have discussed the entire evidence on which the findings were based but the order of the Appel tion 24(2)". In that very case the test laid down by Rowllatt J., in Scales v. George Thompson and Co. Ltd. was accepted a fair test and inter-connection, inter-lacing, inter-dependence and unity were found to exist by virtue of the common management, common business organisation, common administration, common fund and common place of business.

We have no manner of doubt that on applying these principles the conclusion at which the Tribunal arrived was correct and the question referred should have been answered in the affirmative and in favour of the assessee. The appeals are consequently allowed with costs throughout and the answer returned by the High Court is hereby discharged. One hearing fee.

Appeals allowed.

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