

Commissioner of Income-Tax, Andhra Pradesh

Vs

A. Dharma Reddy (decd.) (by his legal representative)

Civil Appeal No. 1057 of 1966

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

19.02.1969

JUDGMENT

GROVER J. -

This is an appeal by certificate from a judgment of the High Court of Andhra Pradesh answering the following question referred to it by the Tribunal arising out of the assessment of the assessee for the assessment year 1956-57 in the affirmative and in his favour :

"Whether the assessee is entitled under the provisions of section 24(2) of the Act to set off his share of unabsorbed loss amounting to Rs. 24,532 from the dissolved firm to M/s. A. Dharma Reddy, Morthad, brought forward from the assessment year 1955-56 against his other business income for the assessment year 1956-57 ?"

The assessee is an individual whose only sources of income were his shares in several partnership concerns. Apart from the firm which carried on other business there were two firms which carried on the business in bidi leaves. The first was styled as M/s. A. Dharma Reddy, Morthad. The second firm was called A. Dharma Reddy and C., Ditchpally. The first partnership was dissolved on March 31, 1955, but the second one continued during the assessment year 1956-57. During the assessment year 1955-56 the assessee sustained a loss of Rs. 30,255 in the first firm. As he was carrying on several other business, after the necessary set-off, the total loss sustained by him for that year came to Rs. 24,532. During the assessment year 1956-57 the assessee's profit in the second firm was estimated at Rs. 11,853 and his total taxable income was assessed at Rs. 28,758 for that assessment year. As the assessee carried on business in bidi leaves during that year he claimed that the loss sustained by him in the previous year, v

"When a firm carries on business, it is a business carried on by the partners of that firm and the individual partners of the firm are assessed to tax. When the profits of a registered firm are ascertained, the assessee, for the purpose of paying the tax, is not the registered firm, but each partner of the registered firm. In the present case, it was in the business in the beedi leaves that the assessee sustained a loss for the assessment year 1955-56. He carried on the same business in beedi leaves during the accounting year 1955-56, i.e., the assessment year 1956-57, though in partnership with others. Entering into partnership with another in one case and three others in the other case was only the mode of carrying on business, but the business is the same business, viz., trade in beedi leaves. Section 24(2) (ii) does not require that the business should be continued to be carried on for the assessment year in question by the same concern or partnership or firm as in the previous year when the loss was orig

In order to dispose of the contentions of the learned counsel for the Income-tax Commissioner who is the appellant before us it is necessary to set out the relevant statutory provisions. Before the amendment made by the Finance Act of 1955, section 24(2) was 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 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....."

Sub-section (2) of section 24 was substituted by section 16 of the aforesaid Finance Act. The material portion was in the following terms :

"(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 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.....

(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....."

The arguments of the learned counsel for the appellant are based mainly on the fact that the partners of the two firms were different although the assessee was a partner of both the firms. It is contended that since the first firm was dissolved on March 31, 1955, it could not be said that the business in which the loss was sustained continued to be carried on by the assessee during the assessment year 1956-57 within the meaning of section 24(2) (ii) of the Act. For getting the benefit under that section it was essential that the business in which the loss was sustained should be continued to be carried on for the assessment year in question. This means that the same concern or partnership which carried on the business in the previous year should continue to function in the year of assessment.

There is no warrant for the proposition put forward on behalf of the appellant that, in order to get the benefit of section 24(2) (ii) of the Act, especially after the amendment made by the Finance Act, 1955, the assessee should carry on the same business in the year of assessment. The change in the language of the provision substituted by the Amending Act is significant and all that the assessee has to show is that the business in which loss was originally sustained continued to be carried on by him in the assessment year. Now, in the present case, the assessee carried on the business in bidi leaves apart from other businesses. This business he was doing in partnership was dissolved it did not mean that his business in bidi leaves came to an end so long as he continued to do that business in bidi leaves came to an end so long as he continued to do that business either individually or in partnership with others. During the assessment year in question he was admittedly carrying on that

business in partnership

The computation of a partner's share in the firms' profits is dealt with by section 16(1) (b). The proviso thereto lays down that if his share was computed as a loss such loss may be set off or carried forward and set off in accordance with the provisions of section 24. Under section 23(5) when the assessee is a registered firm and the total income of the firm has been assessed under sub-section (1), (3) or (4), as the case may be, the total income of each partner of the firm including therein his share of its income, profits and gains of the previous year shall be assessed and the sum payable by him on the basis of such assessment shall be determined. There is a proviso which says that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24. The High Court was right in saying that when the profits of a registered firm are ascertained the assessee for the purpose of paying the tax is not the registered

In both the above cases reference was made to the decision of the Gujarat High Court in *Sitaram Motiram Jain v. Commissioner of Income- tax*. In that case an assessee had incurred losses in a business carried on by him as the sole proprietor and a registered firm, of which he was a partner, took over that business as a running concern. The question was whether he could have the losses incurred by him in the business which he carried on as the sole proprietor carried forward and set off against his share of the profits of the registered firm. After referring to section 24(2) (ii) and section 23(5) it was observed, what has to be determined in the case of a registered firm is the total income of each partner in the firm as the individual partners are assessed to tax and not the firm as such. A set-off for loss which had been carried forward from the earlier years under the provisions of section 24 would only be available to the individual partner who had suffered the loss and not to the other partners of the f

In our judgment there could be no manner of doubt that the business in which the loss had been sustained by the assessee when he was a partner of the first firm which was dissolved on March 31, 1955, continued to be carried on by him in partnership with three other persons during the assessment year 1956-57, the business, as stated before, being of dealing in or entering into contracts in respect of bidi leaves. The mode in which he carried on the business in bidi leaves was one of taking other persons as partners. He did not stop doing that business in the assessment year in question.

The view taken by the High Court, in the present case, is unexceptionable and must be upheld. The appeal fails and it is dismissed with costs.

Appeal dismissed.

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