SUPREME COURT OF INDIA

Commissioner of Income-tax Punjab

Vs.

Kulu Vallety Transport Co. (P) Ltd.

C.A.Nos.859 and 860 of 1968

(J. C. Shah, K. S. Hegde and A. N. Grover, JJ.)

30.04.1970

JUDGEMENT

SHAH, J.-

1. The Kulu Vallye Transport Co. (P.) Ltd.- hereinafter called the Company' - did not file returns of income in respect of the assessment years 1953-54 and 1954-55 within the period specified in the general notice under Section 22 (1) of the Income-tax Act, 1922. In January 1956, the Company filed voluntary returns disclosing loss of income in the course of its business amounting to Rs. 1,151,520 and Rs. 48,977, respectively, for the two years in question. The Income-tax Officer refused to determine the loss observing:

"This is a loss case and the return has been filed after the statutory time. The Company is, therefore, not entitled to the benefit of carry-forward of loss in the subsequent assessments. The case is, therefore, filed."

2. Against the order of the Income-tax Officer, appeals were preferred to the Appellate Assistant Commissioner. That officer rejected the Company's request for extension for filing the returns, and dismissed the appeals, observing:

"The return made under Sec. 22 (2A) can only be taken to be a return under sub-section (1) of Section 22 for the purpose of this Act, if it is made within the statutory time prescribed in sub-section (2A) of the Section 22."

3. The Income-tax Appellate Tribunal in second appeal held that the expression "all the provisions of this Act shall apply as if it were a return under sub-section (1)' in sub-section (2A) only applies to a valid return, i.e., return which is filed within the time limit prescribed under sub-section (1). The Tribunal rejected the contention that a voluntary return disclosing loss of income submitted after the expiry of the period for filing a return under sub-section (1) may be deemed to be a return under sub-section (3), and the loss disclosed therein must be determined under sub-section (2) of Section 24 to qualify the assessee to carry it in the following year.

4. At the instance of the assessee the Tribunal referred the following question to the High Court of Punjab:

"Whether the losses of Rs. 1,51,520 and of Rs. 48,977 returned by the assessee in Jan. 1956 for the assessment years 1953-54 and 1954-55. respectively, require in law to be determined and carried forward under Section 24 (2) of the Income-tax Act?"

The High Court answered the question in the affirmative . The Commissioner of Income-tax has appealed to this Court with certificate granted by the High Court.

5. Sub-section (2A) of Section 22 which was added to Section 22 by Section 14 of Act 25 of 1953 with effect from April 1, 1952, provides:

"If any persons who has not been served with a notice under sub-section (2) has sustained a loss of profits or gains in any year under the head "Profits and gains of business, profession, or vocation", and such loss of any part thereof would ordinarily have been carried forward under sub-section (2) of Section 24, he shall, if he is to be entitled to the benefit of the carry-forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (1) or within such further time as the Income-tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income.....in the same manner as he

would have furnished a return under sub-section (1) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (1)." On the plain words used by the Parliament, sub-section (2A) applies only where the return is filed within the time specified in the general notice under sub-section (1) or within such further time as the Income-tax Officer may allow. A return not filed within the time prescribed by sub-section (1) or time extended by the Income-tax Officer does not comply with the requirement of sub-section (2A), and the assessee cannot claim that the loss be determined and carried forward.

6. The High Court, however, held that a voluntary return filed after the expiry of the period specified in sub-section (1) but before the assessment is made must still be entertained as a return filed under sub-section (3), even if it returns a loss of income under the head "Profits and gains of business, profession or vocation". In" the view of the High Court, sub-section (3) of Section 22 applies to all returns, whether disclosing profit or loss, and whether made voluntarily or pursuant to a notice under sub-section (2), and on that account even if the return is filed beyond the period prescribed by Section 22 (1), and discloses a loss, the Income-tax Officer was bound to determine the loss so that it may be carried forward in the following year. In reaching that conclusion the High Court purported to rely upon Commr. of Income-tax, Bombay City II v. Ranchooddas Karsandas, 1959-36 ITR 569 = (AIR 1959 SC 1154) and Radhakrishna Rungta v. Seventh Income-tax Officer, 1963-49 ITR 846 (Bom).

7. The view expressed by the High Court cannot, in my judgment, be sustained. The assessee who has sustained loss of income under the head "Profits and gains of business, profession or vocation" and who has not been served with a notice under sub-section (2) may qualify for carrying forward the loss in any subsequent year of assessment must furnish within the time specified in the general notice under sub-section (1) or such time as may be extended by the Income-tax Officer a return in the prescribed form disclosing that loss. Under a return filed not in compliance with a notice under sub-section (2) disclosing loss and filed beyond the time specified in the general notice of extended time, the assessee cannot claim to carry forward the loss. The view expressed by the High Court renders sub-section (2A) otiose.

8. It is implicit in the conclusion reached by the High Court that the right to carry forward loss which is expressly restricted by sub-section (2A) may still be exercised under sub-section (3).

9. In determining whether the view expressed by the High Court is permissible, it is necessary to refer to the decision of the Courts under Section 22 before it was amended by Act 25 of 1953. It was held in interpreting S. 22 before it was amended that a return filed beyond the period specified in the general notice, if filed before the assessment is made, must, if it disclosed profit exceeding the maximum exempt from tax, be dealt with according to the provisions of the Act. There was a conflict of decisions on the question whether a return could be filed voluntarily disclosing income below the limit of exemption. In P. S. Rama Iyer v. Commr. of Income-tax, 1957-32 ITR 458 =

(AIR 1958 Mad 40), it was held that a return disclosing profit below the maximum exempt from tax was a valid return: the Calcutta High Court in Commr. of Agricultural Income-tax v. Sultan Ali, 1951-20 ITR 432 (Cal), expressed a contrary view. This Court in Ranchhoddas Karsandas' case 1959-36 ITR 569 = (AIR 1959 SC 1154), agreeing with the Bombay High Court, held that a return disclosing income below the taxable limit submitted voluntarily in answer to the general notice under Section 22 (1) of the Income-tax Act is a good return: it is a return such as the assessee considers represents his true income, and that a return in answer to the general notice under Section 22(1) or in answer to a notice under S. 22 (2) of the Income-tax Act may be virtue of S. 22 (3) be filed at any time before assessment. A return voluntarily made before the assessment cannot be ignored by the Income-tax Officer. In Ranchhoddas Karsandas's case, 1959-36 ITR 569 = (AIR 1959 SC 1154), the assessee had returned without a notice under Section 22 (2) income which was less than the maximum exempt from tax. But the case did not deal with a return in which loss was disclosed by the assessee. In Anglo-French Textile Co., Ltd. v. Commr. of Income-tax, Madras, No. 4, 1950-18 ITR 906 = (AIR 1950 Mad 647), the assessee Company had submitted a 'nil return' pursuant to a notice under Section 22 (2). The Income-tax Officer computed the income of the Company under Section 23 (1) of the Income-tax Act, 1922 as 'nil'. Proceedings were later started under Section 34 of the Income-tax Act to assess the income which the Income-tax Officer believed to have escaped assessment. The assessee then claimed that the loss of profits sustained by it in the previous year should be determined in the proceeding under Section 34 and such loss should be allowed to be carried forward and set off against the income which may be determined for the year for which the notice under Section 34 was issued. The High Court of Madras decided the case on a point which is not relevant here. The case was carried to this Court in appeal. In Anglo-French Textile Co. Ltd. v. Commr. of Income-tax, Madras, 1952-23 ITR 82 = (AIR 1953 SC 111), this Court held that where no return was filed by an assessee at any stage of the case disclosing any income, profits or gains at all and proceedings were later started under Section 34, the assessee could not claim in the course of those proceedings that a certain loss of a previous year should be determined and recorded. The court observed at pp. 85 and 86 (of ITR) = (at pp. 112, 113 of AIR):

"There is no provision in the Act which entitles the assessee to have a loss recorded or computed, unless something is to be done with the loss, Thus, under Section 24 (1), a loss can be set off against an income, profit or gain and under sub-section (2) the balance of a loss can be carried forward to a following year on the conditions set out there. Except for this, there is nothing else that can be called in aid.

But under sub-section (2) the loss can be carried forward when "the loss cannot be wholly set off under sub-section (1)" and in that event only the "portion not so set off' can be carried forward. We are, therefore, thrown back on sub-section (1).

Sub-section (1) provides that where an assessee sustains a loss of profits or gains in 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". Therefore, before any question of set-off can arise, there must be (1) a loss under one or more of the heads mentioned in Section 6, and (2) an income, profit or gain under some other head. It follows that when there is no

income under any head at all, there is nothing against which the loss can be set off in that year and unless that can be done, sub-section (2) does not come into play."

The Court held that loss of income will not be determined, unless the assessee has more heads of income than one, and the loss under one head is to be set off against income under any other head in that year of account. It was implicit in the judgment, that the taxing authorities will not determine loss under the head "profits and gains of business, profession or vocation" when the assessee has no other source of income.

10. The Parliament apparently realised the hardship involved in preventing a persons who has only one source (such source being profession, business or vocation) of income from carrying forward the loss to the subsequent years of assessment and incorporated by Act 25 of 1953, with effect from April 1, 1952, sub-section (2A) and enabled the assessee to carry forward the loss when he made a return within the time specified in sub-section (1), even if there was no other source of income. The Parliament by the same Act amended sub-section (2) of S. 24 and added the words "so much of the loss as is not so set off or the whole loss where the assessee had no other head of income" after the words "cannot be wholly set off under sub-section (1)". This was intended to supersede a part of the decision of this Court in Anglo-French Textile Co. Ltd's case, 1952-23 ITR 82 = (AIR 1953 SC 111).

11. Sub-section (1), (2), (2A) and (3) of Section 22 must be interpreted in this back-ground. Undeniably, sub-section (3) confers upon the assessee a right to submit a return at any time before the assessment is made. Such a return must be voluntary or pursuant to a notice under sub-section (2). The return may disclose income or loss if however the return was made before the Act was amended by the incorporation of sub-section (2A) in Section 22, and it disclosed loss only, according to the decision of this Court loss will not be determined if there be a single source of income. If it be a return filed not pursuant to a notice under sub-section (2) of Section 22, and discloses a loss of income under the head "profits and gains of business', the loss will be determined and carried forward only if it is made within the period specified in sub-section (1) or the period extended by the Income-tax Officer. The clause "if he is to be entitled to the benefit of the carry-forward of loss" in sub-section (2A) clearly means that the right to carry forward loss suffered under the head of income computable under Section 10 may only be exercised if the voluntary return is filed within the period specified in sub-section (1) Sub-section (3) cannot, in my judgment, be read as implying that notwithstanding the restrictions placed by sub-section (2A) a return disclosing loss of income computable under Section 10 will not only be entertained but the loss determined and declared under S. 24 (3) so as to enable the assessee to carry it forward. If a return of loss may be filed at any time in pursuance of a general notice under sub-section (1), sub-section (2A) will serve no purpose whatever. The limitation placed upon the right to file a return of loss is clearly intended to avoid practical difficulties in the administration of the Act. If the interpretation placed by the High Court be accepted, a taxpayer may avoid making returns pursuant to notice under sub-section (1), and when sought to be assessed in subsequent years, he may claim to bring before the authorities transactions relating to many pervious years which he has not disclosed.

12. the view which I am taking was suggested in Tulsi Das Jaswant Lal Kuthiala v. Income-tax Officer, A Ward, ambala, 1964-52 ITR 609 (Punj) and also in Radhakrishna Rungta's case, 1963-49 ITR 846 (Bom) at p. 855.

13. It is true as held by this Court in Ranchhoddas Karsondas's case, 1959-36 ITR 569 = (AIR 1959 SC 1154), that a return disclosing income below the taxable limit or disclosing loss cannot be rejected by the Income-tax Officer as not being a return of income. The view to the contrary in Commr. of Income-tax v. Govindalal Dutta, 1958-33 ITR 630 = (AIR 1958 Cal 195) is erroneous. But that does not mean that the assessee may after filing a voluntary return of loss of income under the head "profits and gains of business" after the period specified in Section 22 (1) claim that the loss be determined and carried forward.

14. In the present case no notice under sub-section (2) was issued to the Company, and the Company made a voluntary return. The return was strictly governed by the terms of sub-section (2A) of Section 22 and upon such a return the Company could not claim that loss of income be determined and carried forward.

15. I would therefore, answer the question in the negative.

15A. **GROVER, J. :** (for himself and Hegde, J.)- 15A. These appeals arise from a judgment of the Punjab High Court answering the following question which had been referred to it by the Income-tax Appellate Tribunal in the affirmative and in favour of the assessee:

"Whether the losses of Rs. 1,51,520 and of Rs. 48,977 returned by the assessee in January 1956 for the assessment years 1953-54 and 1954-55, respectively, require in law to be determined and carried forward under Section 24 (2) of the Income-tax Act?"

The assessee Kulu Valley Transport Co. (P.) Ltd. is a private company incorporated under the Indian Companies Act, 1913, having its registered office At Pathankot. In January 1956, the Company voluntarily filed returns under Section 22 (3) of the Income-tax Act, 1922, hereinafter called the Act', showing losses of Rs. 1,51,520 and Rs. 48,977 for the assessment years 1953-54 and 1954-55, respectively. No notice had been served on the Company under Section 22 (2) of the Act. The Income-tax Officer held that since the returns had been filed after the statutory period, the Company was entitled to carry forward the losses for both the years in the subsequent assessments. Before the Appellate Assistant Commissioner two main points were urged. The first was that the delay in the submission of the returns should have been condoned and secondly, the returns should have been treated as having been made under Section 22 (3) in which case also they would be valid returns under Section 22 (2A) by reading sub-sections (3) and (1) of Section 22 together. The Appellate

Assistant Commissioner did not find any sufficient or reasonable cause for condoning the delay. On the second point he decided against the Company. The Tribunal agreed with the view of the Appellate Assistant Commissioner and on the main point held that the Company was not entitled to the benefit of carrying forward the losses as it had not filed the returns in accordance with Section 22(2A) of the Act.

16. Section 24 (2) contains substantive provisions relating to carrying forward of the loss. It provides that where any assessee sustains a loss or profit or gain in any year being a previous year in any business, profession or vocation and the loss cannot be wholly set off under sub-section (1) (of Section 24) so much of the loss as is not so set off or the wholeloss where the assessee had no other head of income shall be carried forward to the following year. Sub-section (2A) of Section 22 was inserted by the income-tax (Amendment) Act, 1953, with effect from April 1, 1952. Sub-section (2A) of Section 22 reads:

"If any persons who has not been served with a notice under sub-section (2) has sustained a loss of profits or gains in any year under the head "profits and gains of business, profession or vocation", and such loss or any part thereof would ordinarily have been carried forward under sub-section (2) of Section 24, he shall, if he is to be entitled of the benefit of the carry-forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (1) or within such further time as the Income-tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (1) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (1)."

According to Section 22 (1) the Income-tax Officer was to give public notice on or before the first day of May in each year by publication in the prescribed manner requiring every person whose total income during the previous year exceeded the maximum amount which was not chargeable to income-tax to furnish within such period not being less than 60 days as might be specified in the notice a return of his total income and total world income during that year. The Income-tax Officer could in his discretion extend the date for the delivery of the return. Under Section 22 (2) if the Income-tax Officer was of the opinion that income of any person was of such amount as to render him liable to income-tax he could serve a notice on him requiring him to furnish within such period not being less than 30 days a return showing his total income and total world income during the previous year. The date for delivery of the return could again be extended in the discretion of the Income-tax Officer. Section 22 (3) provided that if any person had not furnished a return within the time allowed by or under sub-section (1) or sub-section (2) or having furnished a return under either of those sub-sections, discovered any amount or wrong statement therein, he could furnish a return or a revised return at any time before the assessment was made. Thus, the scheme of Section 22 is that a public or general notice is to be given every year by the Income-tax Officer or he could even give an individual or special notice. But if a persons has not furnished a return within the time allowed by or under the first two sub-sections of S. 22 he could still furnishe a return at any time before the assessment is made. It is well settled by now that a return can always be filed at any time

before the assessment is made. The Income-tax Officer has to make the assessment on that return and he could not choose to ignore it. The question that immediately arises is whether in case of a voluntary return in which loss has been shown and determined, the Income-tax Officer can decline to give the benefit under Section 24 (2) of carrying forward the loss on the ground that the assessee did not comply with the provisions of Section 22 (2A) of the act. In other words, when there is an express provision in that sub-section which must be availed of if the assessee is to be entitled to the benefit of carrying forward of loss in any subsequent assessment can he take advantage of the provisions of Section 22 (3) and claim that since he has filed a voluntary return before any assessment has been made and if it be determined that he has suffered a loss, he is entitled to carry forward that loss.

17. The argument of behalf of the assessee is that Section 24 (2) confers the right to carry forward the loss to the following year provided the conditions contained in the sub-section are satisfied. There is no further requirement that has to be fulfilled so far as the substantive law is concerned. Section 22 (2A) is merely a procedural provision and it also provides that once a return has been furnished in accordance therewith ,all the provisions of the Act become applicable as if it were a return under sub-section (1). That would attract Section 22 (3) and, therefore, a voluntary return can be filed even after the period mentioned in sub-section (2A) has expired so long as the assessment has not taken place. It is pointed out that supposing a return is filed showing income X but the Income-tax Officer in the assessment proceedings holds that there has been a loss and the assessee was mistaken in showing a profit, the assessee in such circumstances can certainly claim the benefit of Section 24 (2). If that is possible, there is no reason or justification for holding that he could claim the benefit of Section 24 (2) by filing a voluntary return in the given illustration he would be deprived of that benefit if he filed a return voluntarily showing a loss except in compliance with S. 22 (2A). On the other hand, the contention on behalf of the revenue is that Section 22, before its amendment in the year 1953, did not make any provision for the filing of a loss return voluntarily. Under Section 22 (1) returns which were invited were only of taxable income. No return which in the opinion of the persons making it was a loss return was intended to be filed under Section 22 (1). It was only under Section 22 (2) that the return that was required to be filed was in pursuance of the individual notice given by the Income-tax Officer. Since by this notice a return in the prescribed form had to be filed by a person to whom the notice was issued whether it was of profit or loss, a loss return could, therefore, be filed only in pursuance of a notice served under Section 22 (2) but not voluntarily. It is by virtue of the provisions contained in Section 22 (2A) that a loss return can be filed where a person has not been served under sub-section (2) in order to get the benefit of the carrying forward of the loss under Section 24 (2). This is indeed expressly provided by sub-section (2A) of Section 22.

18. It would appear that the position before the amendment in 1953 with regard to the filing of a voluntary return of loss was not clear. Although apparently under the provisions of Section 22 there was no bar to the filing of such a return in the same way as the return showing profit could be filed under Section 22 (3), there was conflict of judicial opinion on the point. The Calcutta High Court had held in 1951-20 ITR 432 (Cal) and 1958-33 ITR 630 = (AIR 1958 Cal 195), that voluntary returns showing a loss could not be regarded as returns at all and the Income-tax Officer was not required to make any assessment on them. The Bombay High Court, however, had taken a different view in Ranchhoddas Karsondas v. Commr. of Income-tax, Bombay City, 1954-26 ITR 105 = (AIR

1954 Bom 543). In that case the return which had been filed voluntarily was below the taxable limit. According to the Bombay High Court such a return could be validly filed under Section 22 (3) and the Income-tax Officer could not ignore it so long as the return had been filed before any assessment had been made. In 1959-36 ITR 569 = (AIR 1959 SC 1154), which was an appeal against that decision, this Court while upholding the Bombay view observed:

"It is a little difficult to understand how the existence of a return can be ignored, once it has been filed. A return showing income below the taxable limit can be made even in answer to a notice under Section 22 (2). The notice under Section 22 (1) requires in a general way what a notice under Section 22 (2) requires of an individual. If a return of income below the taxable limit is a good return in answer to a notice under Section 22 (2), there is no reason to think that a return of a similar kind in answer to a public notice is no return at all."

The amendment in 1953 seems to have been made to clarify the law about the filing of a return showing a loss voluntarily. It was declared that such a return could be validly made, the time which was specified for filing the return was on the same lines as in sub-section (1) of Section 22 and all the provisions of the Act were to apply as if it was a return under sub-section (1).

19. Now the question which was submitted for the opinion of the High Court, in the present case, consisted of two parts, viz., (1) whether the loss returned by the assessee for the assessment years in question was required in law to be determined by the Income-tax Officer and (2) whether those losses could be carried forward after being set off under Section 24 (2) of the Act. The first part of the question stood concluded by the decision of this Court in Ranchhoddas Karsondas' case, 1959-36 ITR 569 = AIR 1959 SC 1154). The Income-tax Officer could not have ignored the return and had to determine those losses. Section 24 (2) confers the benefit of losses being set off and carried forward and there is no provision in Section 22 under which losses have to be determined for the purpose of Section 24 (2). The question which immediately arises is whether Section 22 (2A) places any limitation on that right, This sub-section which has been reproduced before simply says that in order to get the benefit of Section 24 (2) the assessee must submit his loss return with the time specified by Section 22 (1). That provision must be read with Section 22 (3) for the purpose of determining the time within which a return has to be submitted. It can well be said that Section 22 (3) is merely a proviso to Section 22 (1). Thus, a return submitted at any time before the assessment is made is a valid return. In considering whether a return made is within time sub-section (1) of Section 22 must be read along with sub-section (3) of that section. A return whether it is a return of income, profits or gains or of loss must be considered as having been made within the time prescribed if it is made within the time specified in Section 22 (3) .In other words, if Section 22 (3) is complied with Section 22 (1) also must be held to have been complied with. If compliance has been made with the latter provision, the requirements of Section 22 (2A) would stand satisfied.

20. On behalf of the revenue it is pointed out that a great deal of inconvenience will result if a voluntary return can be entertained at any time in accordance with Section 22 (3) when loss is

involved and in order to give the assessee the benefit of the carry forward of the loss, a number of assessments would have to be reopened. It is difficult to accede to such an argument merely on the ground of inconvenience. Moreover, it is common ground that a voluntary return cannot be filed beyond the period specified in Section 34 (3) of the Act. It cannot be overlooked that even if two views are possible, the view which is favourable to the assessee must be accepted while construing the provisions of a taxing statute.

21. In the judgment under appeal reliance was placed on a decision of the Bombay High Court in 1963-49 ITR 846 (Bom) and in our opinion the view taken therein is sound and must be upheld.

The appeals fail and are dismissed with costs. One hearing fee. ORDER: In accordance with the decision of the majority, these appeals fail and are dismissed with costs; one hearing fee.

Appeals dismissed.