Reliance Jute and Industries Ltd.

Vs

Commissioner of Income-Tax, West Bengal

Civil Appeal No. 2366 of 1972

(N.L. Untwalia, R.S. Pathak JJ)

10.10.1979

JUDGMENT

PATHAK J. -

This appeal by certificate under section 66A(2) of the Indian I.T. Act, 1922, raises a question involving the interpretation of S. 24(a)(iii) of that Act.

The assessee is a company carrying on the business of manufacturing jute goods. The case relates to the assessment year 1960-61, for which the relevant accounting period is the financial year ending March 31, 1960.

While making the assessment for the assessment year 1959-60, the ITO set-off the unabsorbed business loss of Rs. 1,58,845 for 1949-50 and Rs. 5,70,952 for 1950-51, against the business income of that year and directed that Rs. 15,50,189 representing the loss remaining unabsorbed should be carried forward. In the assessment proceeding for the assessment year 1960-61, with which we are concerned, the assessee claimed that the unabsorbed loss should be carried forward and set-off against the business income of the current year. The ITO rejected the claim on the ground that the unabsorbed loss related to 1950-51 and could not be carried forward for more than eight years. The assessee pressed the claim in appeal before the Appellate Assistant Commissioner but without success. A second appeal was dismissed by the Income-tax Appellate Tribunal. At the instance of the assessee, the Appellate Tribunal referred the following question of law to the High Court at Calcutta :

> "Whether, on the facts and circumstances of the case, the assessee was entitled in law to set-off unabsorbed loss of Rs. 15,50,189 of the assessment year 1950-51 against the business income of the assessment year 1960-61 ?"

The High Court answered the question in the negative.

In this appeal by the assessee it is contended that by virtue of section 24(2)(iii) of the Indian I.T. Act, 1922, as it stood before its amendment with effect from April 1, 1957, the assessee had acquired a vested right to have the unabsorbed loss carried forward from year to year until it was completely set off, and the subsequent amendment limiting the period for carrying forward the loss to eight years could not divest the assessee of the vested right which had thus accrued to him. It is pointed out that the amendment effected in 1957 is not retrospective in operation. In our judgment, there is no substance in the assessee's claim.

Section 24(2) has suffered amendment a number of times. Prior to its amendment by the Finance Act, 1955, it permitted a business loss to be carried forward for not more than six years, except in the case of losses pertaining to certain assessment years ending with the assessment year 1943-44 where the period for carrying forward was shorter. Section 16 of the Finance Act, 1955, amended S. 24(2), and as a result of the amendment S. 24(2)(iii) provided that a business loss which was not wholly set off could be carried forward from year to year. Thereafter, Finance (No. 2) Act of 1957 amended S. 24(2)(iii) with effect from April 1, 1957, and in consequence an unabsorbed loss could not now be carried forward for more than eight years.

The assessee claims a vested right under S. 24(2)(iii), as it stood before its amendment in 1957, to have the unabsorbed loss of 1950-51 carried forward from year to year until the loss is completely absorbed. The claim is based on a misconception of the fundamental basis underlying every income-tax assessment. It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication : CIT v. Isthmian Steamship Lines [1951] 20 ITR 572 (SC) and Karimtharuvi Tea Estate Ltd. v. State of Kerala [1966] 60 ITR 262 (SC). On that principle, it is abundantly clear that when an assessment for the assessment year 1960-61 is to be made and S. 24(2) is invoked, it is S. 24(2) as in force in that assessment year which has to be applied. That is the provision as amended by the Finance (No. 2) Act, 1957. There is no question of the assessee possessing any vested right under the law as it stood before the amendment. The assessment for one assessment year cannot, in the absence of a contrary provision, be affected by the law in force in another assessment year. A right claimed by an assessee under the law in force in a particular assessment year is ordinarily available only in relation to a proceeding pertaining to that year. Therefore, inasmuch as the provisions of S. 24(2), as amended in 1957, govern the assessment for the assessment year 1960-61, the High Court is right in affirming that the unabsorbed loss of Rs. 15,50,189 of the assessment year 1950-51 cannot be carried forward for more than eight years, and consequently, cannot be set off against the business income of the assessment year 1960-61.

It is pointed out that the AAC mentioned in his order for the assessment year 1959-60 that the unabsorbed loss of Rs. 15,50,189 should be carried forward. That direction has meaning only if the law in force in the assessment year 1960-61 permits the unabsorbed loss to be carried forward into the assessment of that year. The direction by the AAC assumes that the law permits the unabsorbed loss to be carried forward into future years, but as we have seen that is not the law and, therefore, the assessee can derive no advantage from that direction.

The assessee relies on the judgment of this court in CIT v. Helen Rubber Industries Ltd. [1962] 44 ITR 714 (SC). That was a case, however, where paragraph 3 of the Taxation Laws (Removal of Difficulties) Order, 1950, operated to divide the previous years to which the provisions of the Travancore I.T. Act, 1946, applied from those previous years to which the provisions of the Indian I.T. Act, 1922, brought into force in the State of Travancore in 1950, would apply. It was because of the Removal of Difficulties Order that the court held that since under the Travancore law the loss could be carried forward for two years only and those two years ended before the previous years for which the Indian I.T. Act began to apply, the benefit of the period of six years under the Indian I.T. Act would not be available. The case is clearly distinguishable.

In the result, the appeal fails and is dismissed. There is no order as to costs.

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