

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Madhukant M. Mehta

(S Agrawal and D Wadhwa JJ.)

29.04.1997

ORDER

1. These appeals by the Revenue relate to entitlement to set-off under Section 78(2) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), in respect of losses sustained in the proprietary business carried on by Mudhakant M. Mehta against the income of the assessee, a registered partnership firm. These appeals relate to the assessment years 1965-66 to 1971-72. In relation to the assessment years 1965-66 to 1969-70, the matter was considered by the Gujarat High Court in its judgment dated August 12, 1980 (see (1981] 132 ITR 159), in Income-tax Reference No. 115 of 1975, whereby the following questions referred to it for its opinion by the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") were answered against the Revenue and in favour of the assessee (page 164):

"1. Whether the Tribunal was right in law in holding that there was succession by inheritance in this case as contemplated by Section 78(2) of the Act and, therefore, the assessee is entitled to carry forward and set off the deceased Shri Madhukant M. Mehta's loss in business against the income for these years ?

2. Whether the Tribunal was right in law in holding that section 75(2) of the Act does not prevent the assessee from claiming the set off of losses in question ?"

2. Civil Appeals Nos. 94 to 98 (NT) of 1982, have been filed by the Revenue against the said decision of the High Court on the basis of certificate of fitness granted under section 261 of the Act. The said judgment was followed by the High Court in its judgment dated August 14, 1980, in Income-tax Reference No. 121 of 1977, in relation to the assessment years 1970-71 and 1971-72. Civil Appeals Nos. 99 and 100 (NT) of 1982, have been filed against the said judgment.

3. The facts, briefly stated, are as follows :

4. Madhukant M. Mehta was carrying on proprietary business of speculation in shares, cotton and other commodities. He died on March 23, 1964, leaving behind his widow, a son and a daughter. On April 22, 1964, the three heirs of Madhukant M. Mehta entered into a partnership and executed a partnership deed wherein they agreed to carry on the said business of speculation. In the said speculation business carried on in the name of the partnership firm, profits were earned and the assessee sought to carry forward and set off the losses incurred by the deceased in his proprietary business against the income from the speculation business of the partnership firm. The Income-tax Officer disallowed such set-off on the ground that there was no succession to the business of the deceased. The Appellate Assistant Commissioner dismissed the appeals filed by the assessee but on further appeal the Tribunal allowed the set-off. The Tribunal found that there was succession to the business of the deceased on the basis of the following circumstances (page 163) :

"(i) The partnership deed which was drawn up on April 22, 1964, within a month of the death of the deceased, records the fact of the parties thereto as heirs and legal representatives of the deceased, and having succeeded to and carried on the speculation business of the deceased. This claim of the assessee having carried on the speculation business even prior to the date of the partnership deed had not been disputed. Even, if the date of the partnership deed is assumed to be the date from which the business had been carried on under the partnership deed, there was an interval of less than one month between the death of the deceased and the date from which the assessee had carried on the business, and such interval even reckoning the partnership to have commenced from the date of the deed of partnership could not be regarded as longer unusual in a case where succession is claimed to have taken place by inheritance on the death of the deceased.

(ii) The nature of the business was identical, namely, speculation business, which was being" carried on by the deceased.

(iii) The business name continued to be the same.

(iv) The business was carried on in the same premises.

(v) The same telephone which was being used by the deceased also continued to be used by the assessee.

(vi) The constituents of the assessee's business were the same as those of the business of the deceased.

(vii) The partnership deed clearly evidenced the intention of the legal heirs who constituted the assessee-firm to continue and carry on the business which was carried on by the deceased."

5. The Tribunal held that the partners, as heirs, had succeeded to the business of the deceased and there was inheritance for the purpose of Section 78(2) of the Act. The said finding recorded by the Tribunal has been accepted by the High Court. The High Court has observed (page 169) :

"At the risk of repetition, it might be stated that the Tribunal has found in the instant case that there was no dispute that even prior to the execution of the partnership deed, the three heirs had carried on the same speculation business and that the partnership was brought into existence within about a month of the death of the deceased. The Tribunal has further found that even after the partnership was brought into existence, the business was continued in the same name and in the same premises and the constituents of the assessee's business were the same as those of the business of the deceased. It has been found earlier that during the interval of time between the death of the deceased and the formation of the partnership the outstanding recoveries were effected and the subsisting transactions were cleared and the assets of the business were utilised in clearing the liabilities by the three heirs in the process of carrying on the business as successors."

6. Shri Shukla, learned senior counsel appearing for the Revenue, in support of the appeals, has invited our attention to the decision of this court in *Saroj Aggarwal v. CIT* [1985] 156 ITR 497, wherein this court has dealt with the question regarding applicability of Section 78(2) of the Act in the context of succession to the business of a deceased partner in the partnership. In that case, this court has approved the decision of the Bombay High Court in *CIT v. Bai Maniben* [1960] 38 ITR 80, wherein the High Court has observed that the conclusion of the Tribunal as to whether there was succession by inheritance is one of a question of fact.

7. Having regard to the finding recorded by the Tribunal after taking into consideration the facts and circumstances that the partners, as heirs, had succeeded to the business of the deceased which

finding has been accepted by the High Court in the present case, we are of the opinion that in the facts of these cases no ground is made out for interference with the impugned judgment of the High Court. The appeals are, therefore, dismissed. No order as to costs.