

ALLAHABAD HIGH COURT

Jagannath Mahadeo Prasad

Vs.

Commissioner of Income Tax

I. T. Ref. No. 130 of 1960
(M.C. Desai, C.J. and R.S. Pathak, J.)

14.04.1964

JUDGMENT

Pathak, J.

1. This is a reference at the instance of the assessee under Section 66(1) of the Indian Income Tax Act.
2. The assessee, an individual, enjoyed income from property, shares in joint stock companies, commission agency and also as partner in a number of firms. He submitted a return of his income for the assessment year 1953-54, disclosing a net profit. This profit was computed after setting off a loss from his share in one of the partnership firms, Kamta Prasad Reghunath Prasad, the loss being determined by taking into account a sum of Rs. 8,669/- representing the net loss suffered by him in speculative transactions and paid through that firm.
3. The Income Tax Officer ignored the loss claimed by the assessee from the firm, but the Appellate Assistant Commissioner found that the assessee had suffered a net loss of Rs. 7,254/ upon the speculative dealings, and directed the Income Tax Officer to carry forward that loss for being set off against the profits from speculative dealings in subsequent years. In appeal before the Appellate Tribunal the assessee contended that the loss of Rs. 7,254/- from speculative dealings should be set off against the profits from other businesses for the purpose of computing the profits and gains under Section 10(1) of the Act. This claim was negatived by the Appellate Tribunal, which relied upon the first proviso to Section 24(1).
4. Accordingly, the following question has been referred :

"Whether the speculation loss can be set off against the profit from any other business activity under Section 10 in spite of the first proviso to Section 24(1)?"

Section 10(1) provides :

"10(1). The tax shall be payable by an assessee under the head 'Profits and gains of business, profession or vocation' in respect of the profits or gains of any business, profession or vocation carried on by him."

And Section 24(1), at the relevant time, declared :

"24 (1). Where any 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 :

Provided that in computing the income, profits and gains chargeable under any head or the loss of profits and gains falling under any head, so much of any loss of profits or gains as would but for the loss have accrued or arisen within the State of Jammu and Kashmir, shall not be taken into account except to the extent of the amount of income, profits and gains, if any, which would be exempt under the provisions of Clause (c) of Sub-Section (2) of Section 14 :

Provided further that in computing the profits and gains chargeable under the head "Profits and gains of business, profession or vocation", any loss sustained in speculative transactions which are in the nature of a business shall not be taken into account except to the extent of the amount of profits and gains, if any, in any other business consisting of speculative transactions :

Provided further."

5. The first proviso was omitted by the Schedule to the Taxation Laws (Extension to Jammu and Kashmir) Act, 1954, and in the second proviso, which now became the first proviso, the word "further" was in consequence omitted. The question framed by the Appellate Tribunal refers to the first proviso to Section 24(1), but it is apparent that reference was actually intended to the provision which was the second proviso to that Sub-Section as it stood during the assessment year 1953-54.

6. The assessee contends that the aforesaid proviso to Section 24(1) does not govern the computation of the profits and gains for the purpose of Section 10, and that the proviso should be read only when the provisions of Section 24(1) are applied. For the Commissioner, however, it is urged that the proviso cannot be treated as a step in the application of Section 24(1) but should be considered when the profits and gains are computed under Section 10. The point which arises is one of no little difficulty, but having given the matter our careful consideration, in our opinion the contention advanced on behalf of the assessee must prevail.

7. Section 3 declares that income-tax shall be charged in respect of the total income of the previous year of every individual, Hindu undivided family, company, etc. "Total income", by Section 2(15), means "total amount of income, profits and gains-referred to in Sub-Section (1) of Section 4 computed in the manner laid down in this Act". And Section 4(1) provides that the total income of any previous year of any person includes all income, profits and gains from whatever source derived which are received or are deemed to be received, accrue or arise or are deemed to accrue or arise in the circumstances classified in that Sub-Section. Then Section 6 divides the total income chargeable to income tax into six heads of income, profits and gains, one of them being "profits and gains of business, profession or vocation", while the others are "salaries", "interest on securities", "income from property", "income from other sources" and "capital gains". Then follow provisions indicating how the income, profits and gains under these several heads should be computed, and one of these provisions is Section 10. Having provided this, the Act then proceeds to detail the procedure which must be followed for assessing the total income, determining the sum payable on the basis of that assessment and requiring the payment of that sum. The income, profits and gains computed under the several heads are, during the process of assessment, aggregated for the purpose of determining the total income. Now, because income-tax is only one tax and not a number of taxes according to the number of heads, Section 24(1) makes provision for setting off a loss of profits or gains sustained under one head in any year against the income, profits or gains under any other head in that year. This was considered necessary for the purpose of determining the total income of that year, and is an important step in arriving at the true figure of the total income.

8. Both Section 10 and Section 24(1) play their part in the assessment of total income,

but they operate at different stages in the process of assessment. Section 10 is applied when the profits and gains of a business, profession or vocation are computed for determining the assessable amount under that head. When under similar provisions, the income, profits and gains under other heads have also been computed, then the stage is reached when the loss, if any, under one head must be set off against the profits under another. This is abundantly clear from the provisions of Section 24(1) itself. It refers to the heads mentioned in Section 6 and provides for setting-off the loss sustained under one head against the profits enjoyed under any other head. That is a stage which comes in the process of assessment distinctly after the loss or profits, as the case may be, have already been computed under the several heads in accordance with the earlier provisions of the Act. But while providing for the setting-off of loss under one head against profits under another, the Legislature has inserted a number of provisos, among them being the proviso under consideration. The effect of these provisos is, in our judgment, to limit the field upon which Section 24(1) operates. By virtue of the proviso under consideration, the Legislature enjoins that if one of the heads to be considered is "Profits and gains of business, profession and vocation" when you apply the provisions relating to set-off under Section 24(1), you must compute the profits and gains under that head in the manner laid down in the proviso, and it is the profits and gains so computed that can be set off. The proviso requires that in the computation, the loss sustained on speculative transactions must not be taken into account except to the extent of the amount of profits or gains in any other business consisting of speculative transactions. In other words, when applying the rule of set-off incorporated in Section 24(1), the profits and gains under the aforesaid head which will be set off is not that computed under Section 10 but that determined after ignoring the loss on speculative transactions which is in excess of the profits in any other business of the same nature. On this construction, the proviso appears to be a provision enacted for the purpose of limiting or curtailing the set off available under Section 24(1). The contention that the proviso does not relate at all to Section 24(1) cannot be accepted. The construction which we are inclined to place upon the proviso appears to us to be reasonable. If the proviso can be reasonably related to the provisions of Section 24(1), there is no reason why it should not be considered in its true character to be a proviso to Section 24(1).

9. It might be said that one central idea runs through the entire body of Section 24(1), namely, the formulation of the rule that in determining the aggregate income of an assessee the loss of profits or gains under one head shall be set off against the income,

profits or gains under another head, and what are the limitations within which such set off may be effected. It is not disputed that the first and third provisos are in their true nature provisos to Section 24(1). It will be noticed that Section 24(1) contains two expressions, "income, profits or gains" and "loss of profits or gains". The loss of profits or gains under one head are to be set off against the income, profits or gains under another head. The first proviso operates when you are computing either the income, profits and gains chargeable under any head or the loss of profits and gains falling under any head. Both these expressions refer to Section 24(1), and it seems clearly to imply that the first proviso is related to Section 24(1). For the same reason it can be said that the third proviso is also related to Section 24(1). If that is so, then there can be little room for the contention that the second proviso is not really a proviso to Section 24(1). Its nature should be the same as that of the provisos going before and after. Indeed, the use of the word "further" in this proviso and in the one which follows seems to indicate this. If the first proviso is in its true character a proviso to Section 24(1), there is good reason why the proviso under consideration which follows it should also be so considered, for it opens with the words "Provided further" And, if the third proviso is also really a proviso to Section 24(1) since its opening words include the word "further", that appears to be an indication that the provisos which precede it are also provisos to Section 24(1). After the omission in 1954 of the first proviso and, consequently, of the word "further" in the proviso under consideration, the retention of the word "further" in the last proviso points to the conclusion that these two provisos remaining in 1954 must be read as provisos to Section 24(1).

10. In support of his contention, learned counsel for the Commissioner relied principally upon a decision of the Bombay High Court in *Keshav Lal Premchand v. Commissioner of Income Tax, Bombay*,¹ where it was held that this proviso must be construed as a substantive; provision which comes into operation when profits and gains are computed under Section 10. Chagla, C.J. who delivered the judgment of the Court, appears to have been influenced primarily by the words "...in computing the profits and gains chargeable under the head 'Profits and gains of business, profession or vocation'." He reasoned that the computation of profits and gains chargeable under that head was a matter falling for consideration under Section 10 and, therefore, the proper time when this proviso could be said to operate was when the computation was made under Section 10. He pointed out that when one came to the stage of applying Section 24(1), the computation of the profits and gains chargeable under the head

"profits and gains of business, profession or vocation" had already been completed under Section 10. He observed :

"It was entirely unnecessary to compute the profits and gains of business, profession or vocation for the purpose of Section 24(1) because that had already been done under Section 10(2)."

In view of the construction which, we think can fairly be placed upon the proviso, we find ourselves, with respect, unable to agree with the view expressed by the Bombay High Court. The learned Judges of the Bombay High Court did not consider that the profits and gains falling under the head "profits and gains of business, profession or vocation" could be required to be computed for two distinct purposes, one for the purpose of determining the taxable profits and gains under Section 10 and the other for the purpose of applying the rule of set off incorporated in Section 24(1). It was open to the Legislature to provide different modes of computing the profits and gains for the two separate purposes. The mode of computing the profits and gains contained in the proviso under consideration is specially intended for the purpose of determining the limitations within which the rule of set off should be applied. This aspect of the proviso did not receive the consideration of the learned Judges of the Bombay High Court. Learned counsel also relied upon *Commissioner of Income Tax, Nagpur and Bbandara v. Ram Gopal Kaniyalal*,² but that decision proceeded almost entirely on the reasoning underlying *Keshav Lal, Premchand's case, 1957-31 ITR 7 : AIR 1957 Bombay 201 (supra)*. We were then referred to *Commissioner of Income Tax v. Ram Saran*.³ where a Full Bench of the Punjab High Court took the same view. The considerations which prevailed with the learned Judges, appear to our mind to be identical with those upon which the decision in *Keshav Lal Premchand's case, 1957-31 ITR 7 : (AIR 1957 Bombay 20 (supra)* rested. Then also the decisions in *Jummarlal Surjkaran v. Commissioner of Income Tax*,⁴ *Shree Hanuman Investment Co. Ltd. v. I.T. Commr. West Bengal, Calcutta*⁵ and recently in *Joseph John v. I. T. Commissioner Kerala*,⁶ In all these cases the learned Judges largely relied upon the considerations which prevailed in *Keshav Lal Premchand's case, 1957-31 ITR 7 : AIR 1957 Bombay 20 (Supra)*.

11. In our judgment, for the purpose of computing the profits and gains from business under Section 10. the proviso to Section 24(1) under consideration can have no application.

12. Accordingly, the question referred must be answered in the affirmative.
13. We direct that a copy of this judgment under the seal of the Court and the signature of the Registrar shall be sent in the Income Tax Appellate Tribunal.
14. The assesses shall be entitled to his costs which we assess at Rs. 200/-. Counsel's fee is also assessed at Rs. 200/-.

Reference answered.

Cases Referred.

1. (1957) 31 ITR 7: AIR 1957 Bom 20
2. 1960-38 ITR 193: AIR 1960 Mad Prad 100
3. 1962-45 ITR 248: (AIR 1962 Pun 318 (FB))
4. 1963-47 ITR 809 (Andh Pra)
5. 1063-48 ITR 915 (Cal)
6. 1904-51 ITR 322 (Ker)