

CALCUTTA HIGH COURT

Aluminium Corporation of India, Ltd

Vs.

Commissioner of Income-tax

Income-tax Ref. No. 41 of 1955

(P. Chakravarti, C.J. and B.K. Guha, J.)

19.08.1957

JUDGMENT

P. Chakravarti, C.J.

1. This Reference under section 66 (1) of the Income-tax Act, involves a point which, though short, is somewhat tricky.
2. The assessee is a company, called the Alluminium Corporation of India Limited and the assessment year in question is 1949-50. It appears that during the accounting year 1948-49, relative to that year of assessment, the assessee company showed a profit of Rs. 9,56,479/- which was done without deduction of the depreciation due for that year. The amount of depreciation allowance to which the assessee was entitled in respect of its working during the year in question was Rs. 12,52,117/-. The Income-tax Officer set off that depreciation against the profit and determined the difference, namely, Rs. 2,95,638/-, as the loss for the year. The amount so determined as loss was directed to be carried over to the next year as unabsorbed depreciation.
3. The company, however, had an amount of Rs. 27,359/- as loss carried forward from earlier years. Before the Income-tax Officer it was contended that against the year's profit of Rs. 9,56,479/-, the amount of the loss carried forward from the previous years, namely, Rs. 27,359/-, should first be set off and then should be set off, as against the balance of the profits, the depreciation allowance due for the year, that is to say Rs. 12,52,117/-. The difference between the method followed by the Income-tax Officer and that contended for by the assessee would be this : according to the determination of the Income-tax Officer two amounts were to be carried forward to the next year, namely, Rs. 2,95,638/- as unabsorbed depreciation for the year and Rs. 27,359/- as the loss brought up from the earlier years. If the method suggested by the assessee was followed, only one sum, namely, Rs. 3,22,997/- would be carried forward as unabsorbed depreciation. It will be noticed that the total of the two sums directed to be carried forward under

the Income-tax Officer's determination was the same sum of Rs. 3,22,997/-, but it would be to the assessee's advantage, under the law as it then stood, to have the two amounts carried forward as unabsorbed depreciation in one sum, because whereas loss could be carried forward for only six years, there was no time limit at all with regard to the carrying forward of unabsorbed depreciation.

4. The Appellate Assistant Commissioner and after him the Tribunal both upheld the Income-tax Officer in appeals successively preferred to them by the assessee. The assessee, being dissatisfied, asked for a Reference to this Court and the following question of law has been referred :

"Whether the depreciation allowance of Rs. 12,52,117/- relating to the current year has been rightly set off against the profits of Rs. 9,56,479/-of the said year as against the assessee's claim that the loss carried forward from the previous years, namely, Rs. 27,359/-be, in the first place set off against the said profits of Rs. 9,56,479/-".

5. The two provisions of the Income-tax Act from which the correct method of setting off depreciation allowance or other loss against the profits of a year, when both are available for being set off is to be spelt out, are somewhat involved. It is not that the method itself is very complicated, but the form in which it has been laid down in proviso (b) to section 10 (2) (vi), read with clause (b) of section 24 (2) and the manner in which the two provisions have been interlinked make some amount of analytical work necessary in order to arrive at the true import of the provisions. The position appears to be the following.

6. Among the allowances admissible under section 10 (2) of the Act in computing the profits or gains of business is an allowance for depreciation of buildings, machinery, plant or furniture belonging to the assessee and used in or for the business. It follows that where the profits or gains of business for a particular year are to be ascertained, the allowance in respect of depreciation, like the other allowance, has to be deducted from the gross profits or gains in order to arrive at the taxable quantum. Where the balance of the business profits left after deducting the other allowances to which the assessee is entitled is larger in amount than the depreciation allowance admissible to him, the whole of the depreciation allowance will necessarily be absorbed and go towards reducing the quantum of the profits. It may, however, happen that the profits are found to be smaller in amount than the depreciation allowance due or it may even happen that there are no profits or no more profits at all. In the former case, a part of the depreciation allowance will be absorbed, while the balance will remain unabsorbed and in the latter case, the whole of the depreciation allowance will remain unabsorbed. To set off the allowances against the profits so as to reduce the quantity of the latter is, in the language of the Income-tax Act, to give effect to the allowances. What is to be done when the depreciation allowance cannot at all be absorbed by the profits of the year or when it can be absorbed only in part is laid down in proviso (b) to section 10 (2) (vi) of the Act. So far as is material, the proviso at the relevant time read as follows :

"Where full effect cannot be given to any such allowance in any year * * * * owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, then subject to the provisions of clause (b) of the proviso to sub-section (2) of section 24, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year and so on for succeeding years."

7. Clause (b) of section 24 (2), to which reference is made in proviso (b) to section 10 (2), (vi), reads as follows :

"Where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of Section 10, also to be carried forward, effect shall first be given to the provisions of this subsection."

8. In order to understand clause (b) of sub-section (2) of Section 24 which directs effect to be first given to the provisions of that sub-section, it is necessary to see what the sub-section itself provides. So far as is material, sub-section (2) of Section 24 reads as follows : (I am setting out the section as it stood at the relevant time).

"Where any assessee sustains a loss of profits or gains in any year, * * * * and the loss cannot be wholly set off under Sub-section (1), the portion not so set off 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; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on."

9. It will thus be seen that Clause (b) of section 24 (2) lays down a rule of priority and it directs that, in circumstances therein stated, the sub-section shall first be applied or, in other words, the loss available for being set off shall first be set off and set off before depreciation is set off.

10. In what circumstances proviso (b) to section 10 (2) (vi) and clause (b) of section 24 (2) will both be applicable is really the matter in controversy between the parties in the present case. It will be remembered that without deduction of depreciation allowance to which it was entitled, the assessee had profits amounting to Rs. 9,56,479/-. It had also a loss of Rs. 27,359/- brought up from earlier years. The depreciation allowance due to the assessee for the current year was Rs. 12,52,117. If that amount was set off against the amount of the profits, a surplus would be left or, in other words, there would be an amount of depreciation allowance to be carried over. The contention of the assessee was that since there was the amount of Rs. 27,359/- as loss carried forward and since, if the amount of the depreciation allowance was set off against the amount of the profits, there would be a surplus of depreciation allowance to be carried forward, this was a

case where clause (b) of section 24 (2) applied and, therefore, the amount of the loss was to be set off first. I have already explained why it was to the advantage of the assessee to have other losses set off and absorbed by the profits first, because thereby it would be saving more of the depreciation allowance which it would be able to carry forward without being embarrassed by any limit of time.

11. The contention urged before us had been urged before the Tribunal as well. The Tribunal in rejecting it, did not give any reasons of their own, but adopted the reasons given by the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that there could be no competition between losses carried forward from previous years and the depreciation allowance for the current year, because in order to ascertain the profits of the current year, the depreciation allowance would in any case have to be set off against the profits first. If after so setting off the depreciation allowance of the current year against the year's profits and gains, an amount was left un-absorbed and the question of setting off that unabsorbed amount arose in future year in relation to the profits of that year, then only in the Assistant Commissioner's view, the proviso (b) to section 24 (2) would come into operation, but not before. In my opinion, the view taken by the Appellate Assistant Commissioner was clearly the right view.

12. If I may begin from the beginning, I may point out that the depreciation allowance admissible in respect of a particular business has first to be set off against the profits of that business. If it is not exhausted, the balance left is next to be set off against the profits of other business, if any, carried on by the assessee. That would be by virtue of Section 10 (1) of the Act which speaks of "any business * * * carried on by" the assessee, that is to say, all businesses. Since the profits and gains contemplated by section 10 are the profits and gains of the totality of the business operations of the assessee, howsoever, numerous the different businesses carried on by him may be, it is obviously necessary and permissible that in order to compute the assessee's profits or gains from business, losses of or depreciation allowance admissible in respect of one business can and must be set off against the profits of another, if necessary. The second step, therefore, will be, as I have already stated, that if the depreciation allowance admissible in respect of a particular business cannot be wholly absorbed by the profits of that business, the balance will have to be set off against the profits or gains of other businesses, if any. If the depreciation allowance is still not exhausted, then it has to be set off against the profits, if any, under other heads of income, as set out in section 6 of the Act. That would be by virtue of Section 24 (1). If the depreciation allowance is still not exhausted, only then there will be an amount available for being carried forward to the next year.

13. In the case I have just indicated, namely, where after the depreciation allowance for the current year has been set off against the profits of the business or all the businesses, as the case may be and also against profits under other heads of income, there is still an amount left, there will obviously be no loss of the current year to be carried forward. If there had been loss, there could not be any profits against which the depreciation allowance was set off. There may,

however, be some loss carried forward from earlier years. It was contended on behalf of the assessee that in the case before us there was such an amount of loss and the further argument was that since the depreciation allowance, as set off against the profits, would also be in surplus, this was a case which came directly under clause (b) of section 24 (2), because there were both an amount of loss and an amount of depreciation allowance to be carried forward.

14. I am unable to accept that contention. The setting off of the current year's depreciation against the profits of the year is carried out under, first, section 10 (1) of the Act and then under Section 24 (1). Section 24 (2) comes into play only after the operation envisaged by Section 24 (1) has already been carried out. It was contended on behalf of the assessee that what proviso (b) to Section 10 (2) (vi) contemplated was that after the allowances enumerated in clauses (i) to (v) had been deducted and when the stage of considering the depreciation allowance mentioned in clause (vi) had arrived, the Income-tax Officer had to see what the effect of setting off the depreciation allowance of the current year against the year's profits would be and if he found that the effect would be to leave a surplus, then this would be a case where there was an amount of depreciation allowance to be carried forward within the meaning of clause (b) of Section 24 (2). The fallacy of that argument is that the process of setting off the current year's depreciation against the year's profits belongs to the stage of section 24 (1), whereas, as I have already pointed out, section 24 (2) is not in the field at all before the operation contemplated by section 24 (1) has been carried out. The argument that proviso (b) to Section 10 (2) (vi) contemplates a tentative estimate of the effect of setting off the current year's depreciation allowance against the year's profit must therefore be put on one side.

15. The above is sufficient for the disposal of the present case. Here the depreciation allowance and the losses of earlier years are, if I may use the expression, at different levels or placed in time at different stages of the procedure or assessment. What clause (b) of section 24 (2) contemplates is that there is some loss to be carried forward and what it says specifically is that there is some depreciation allowance "also to be carried forward." The crucial word, to my mind, is the word 'also'. It enjoins by implication that the depreciation allowance to be carried forward must also be a depreciation allowance available at the stage when losses carried forward can in law be applied to the reduction of a particular year's profits. The two must belong to the same level.

16. That such is the meaning of proviso (b) to section 10 (2) (vi), read with clause (b) of Section 24 (2), would be clear from a close examination of the terms of those two provisions. Proviso (b) to Section 10 (2) (vi) begins with setting out by way of a premise that there is an amount of depreciation allowance to which effect or full effect cannot be given owing to there being no profits or owing to the profits or gains chargeable being less than the allowance. There is thus a surplus of allowance. As to what is to be done with the surplus, the further provision of the proviso is that "subject to the provisions of Clause (b) of the proviso to sub-section (2) of section 24, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year." What is

contemplated is that the surplus allowance is to be "added to the amount of the allowance for the following year" and it is this 'adding to' which is made subject to the provisions of clause (b) of Section 24 (2). On being added to the allowance for the following year, the amount added becomes a part of the following year's allowance and the obvious effect is that it is to be treated or applied in the same manner as the allowance of the future year to which it is added.

17. It is now to be seen what the effect is of the provision for the surplus allowance being added to the allowance for the following year, being made subject to the provision of clause (b) of Section 24 (2). I am bound to say that if one takes this provision, as also clause (b) of Section 24 (2) literally, one encounters an apparent difficulty. The language of the proviso (b) to section 10 (2) (vi) is that the surplus allowance shall be "added to the amount, of the allowance" for the following year, while the language of clause (b) of Section 24 (2) is that there is a depreciation allowance to be "carried forward." The effect is perhaps the same, because unless the surplus amount is carried forward, it cannot be added to the amount of the allowance for the following year. But the difficulty which arises from the language of the two provisions is that if the surplus depreciation allowance is to be carried forward, subject to the provisions of Clause (b) of Section 24 (2), it would seem that the operation is to be subject to the whole of Clause (b) of Section 24 (2). That clause provides that effect shall first be given to the provisions of Section 24 (2) where depreciation allowance is, under proviso (b) to Section 10 (2) (vi), also to be carried forward and, therefore, the clause would seem to imply that when the stage for giving effect to the provisions of Section 24 (2) has arrived, it has already been found that there is a depreciation allowance to be carried forward under Clause (b) of the proviso to Section 10 (2) (vi). On the other hand, the language of the proviso suggests that whether or not the surplus amount of the depreciation allowance is to be added to the allowance for the following year, that is to say, to be carried forward, will appear only after the provisions of Clause (b) of Section 24 (2) has been carried out, that is to say, where, on it being found that there is a depreciation allowance also to be carried forward, effect has first been given to Section 24 (2). The procedure for something to be decided is thus made subject to another procedure which, if carried out, will involve the decision of that very thing, so that, after it has been carried out, there will be nothing further to decide. It appears to me, however, that what Clause (b) of the proviso to Section 10 (2) (vi) really intends to lay down is that the surplus amount of depreciation shall be added to the amount of depreciation allowance for the following year, subject only to the operative portion of Clause (b) of Section 24 (2), that is to say, subject to the losses being first set off.

18. I may now proceed to examine a little more closely Clause (b) of Section 24 (2). As already indicated, it contemplates that there is an amount of loss to be set off and also an amount of depreciation allowance to be set off. The enquiry is in what circumstances such a situation can arise. It appears to me that it can arise only when there is an amount of depreciation allowance carried over from earlier years and available for being set off against the profits of a particular year and equally there is an amount of loss carried over from earlier years which also is available for being set off. Such a case will be a case where after the setting off contemplated by Sections

10(2) (vi), 10 (1) and 24(1) has been carried out in full against the profits of the current year, there is still a balance of profits left and, at the same time, there is available an amount of depreciation allowance carried over from the earlier years as also an amount of loss, similarly carried forward. The question being which of the two amounts will first be applied to the reduction or extinction of the balance of the profits, Clause (b) of Section 24 (2) directs that the carried over loss shall first be set off. Clause (b) of the proviso to Section 10(2) (vi) says nothing different, because what it says is that the surplus amount of depreciation allowance shall be "added to the amount of the allowance for depreciation for the following year," subject to the provisions of Clause (b) of Section 24 (2). It is to be noticed that, under the proviso, the amount of depreciation allowance added to the amount of such allowance for the subsequent year is to be deemed to be a part of the latter allowance. The mandate of Clause (b) of Section 24 (2) being that in such a case the loss, which means the carried over loss, shall first be set off, the depreciation allowance shall be set off only if there is some balance of the profit still left.

19. If such be the true effect of Clause (b) of the proviso to Section 10(2) (vi), read with Clause (b) of Section 24(2), it is clear that no question of a priority as between the setting off of the depreciation allowance for the current year and the carried over loss of earlier years can ever arise. The facts of the present case, therefore, do not belong to the stage where effect is to be given to the priority. They belong to an earlier stage where the depreciation allowance has not yet got on to the same level as the carried forward loss and therefore there is no depreciation allowance also to be carried forward, as contemplated by Section 24 (2) (b). The assessee's contention that the carried forward loss of Rs. 27,359/- ought first to have been set off against the current year's profit of Rs. 9,56,479/- was, therefore, rightly negatived.

20. For the reasons given above, the answer to the question referred is in the affirmative.

21. The Commissioner of Income-tax, West Bengal, will have the costs of this Reference.

B. K. Guha J.

22. I agree.

Reference answered in affirmative.