

MADHYA PRADESH HIGH COURT

Commissioner of Income-tax,

Vs.

Ramgopal Kaniyalal, Sarafa, Ujjain

Misc. Civil Case No. 218 of 1957

(P.V. Dixit, J.)

07.09.1959

JUDGMENT

T.C. Shrivastava J.

1. This reference under Section 66(1) of the Indian Income-tax Act, 1922, has been made by the Income-tax Appellate Tribunal, Bombay, at the instance of the Commissioner of Income-tax, New Delhi. The assessee did not appear when the case was heard.

2. The question which has been referred to us for opinion is :

""Whether the assessee is entitled to set off the loss of Rs. 21,748/- against his other business income falling under section 10 of the Act?"

3. The assessee derived income in the relevant year from (i) house property; (ii) money lending and commission agency; and (iii) speculation in gold, silver and cotton. The Income-tax Officer refused to adjust the loss of Rs. 21,748/- in the speculation business against the profits from other business. The assessee filed an appeal which was dismissed by the Appellate Assistant Commissioner. A second appeal was preferred before the Income-tax Appellate Tribunal, Delhi Bench, which allowed it, but has referred to this Court the question of law set out above.

4. The scheme of the Income-tax Act may here briefly be stated. Under section 6 the activities yielding income and profit have been divided into six heads. After indicating the heads separately, each head is provided for in detail in Sections 6 to 12. Section 10 deals with the manner of computing the income from business, profession and

vocation. Formerly, the income under each head was liable to tax separately irrespective of the losses under any other head. Section 24, however, provides now that the losses under one head can be set off against the gains in another head and thus only the net resultant income is taxable. Sub-section (1) of section 24 has two provisos, the first being as follows :

"Provided that in computing the profits and gains chargeable under the head 'Profit 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."

It is this proviso which calls for interpretation in this case.

5. We may state that till 1954 there was another proviso to this section which provided for the adjustment of loss sustained in business outside the taxable territories. This proviso was interpreted consistently to come into play only after the profits and losses had been computed under each head separately in accordance with section 10 of the Act. In other words, it was held that the losses incurred in outside territories could be adjusted against the gains in taxable territories in ascertaining the net income from business, profession or vocation under the fourth head in Section 6, notwithstanding the contrary provision implied in this proviso to Section 24. See *Commissioner of Income-tax v. C. P. Syndicate*,¹ and *Commissioner of Income-tax, Punjab v. Hira Mall Narain Dass*,²

6. The question was recently considered by the Supreme Court in *Income Tax Commissioner v. Indo Mercantile Bank Ltd.*, AIR 1959 Supreme Court 713. Though it arose in the context of the Travancore Income-tax Act, the decision applies equally to the Indian Income-tax Act, as the wordings are similar in the relevant provisions. The contention that the proviso to section 24 amounted to a substantive enactment governing section 10 of the Act was repelled. Their Lordships explained the proper function of a proviso in some detail and concluded :

"The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main

enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

Thus a proviso normally operates in the field which is the subject-matter of the main section and its operation should not be extended beyond it except for compelling reasons. On this view, their Lordships held that the proviso left the question of adjustment of profits and losses within the same head unaffected.

7. These decisions support the interpretation which has been accepted by the Tribunal. However, it has to be seen whether the wordings of the proviso about speculation losses clearly imply that it would govern the computation of income from different businesses under the same head. We are of the opinion that this is so. The opening words of the proviso are –

"in computing the profits and gains chargeable under the head 'Profits and gains of business, profession or vocation'

These words clearly mean that what is being laid down in the proviso is for the purpose of ascertaining the income from a particular head under section 10. The words "any loss sustained in speculative transactions which are in the nature of a business" further confirm this inference. It is obvious that the losses are in one of the businesses of the assessee for which special provision is being made. That special provision is that the losses shall not be adjusted towards the profits of any other business. Such a contingency cannot arise at all if the proviso were to operate only within the field of the main provision. It would in that case be more or less meaningless. We must therefore hold that the proviso affects expressly the method of ascertaining profits and losses of the various businesses. It, therefore, follows that the losses in speculative business cannot be adjusted against the profits of other businesses.

8. That there may be exceptional cases where a proviso can be construed to operate beyond the main enactment is recognized by the Supreme Court in the case referred to above. While examining the proviso which was being interpreted in that case, their Lordships observed :

"In the proviso in dispute there are no positive words which would support an interpretation in favor of the disintegration of the head 'business' and compel the

application of the proviso to the same head, specially keeping in view the object of the main section i. e. Section 24(1) which was to set off loss of profits or gains under one head against income, profits or gains under any other head."

In the proviso which is before us the words used clearly modify the method of computation under section 10 of the Act.

9. The question arose for interpretation in the Bombay High Court in *Keshavlal v. Income-tax Commissioner*,³ While appreciating the rule that a proviso operates within the main enactment, the learned Judges found that the express words in the proviso in dispute implied that it governed section 10 of the Act. We are in respectful agreement with this decision.

10. Our conclusion is that in computing the profits and gains chargeable under the head "Profits and gains of business, profession or vocation" the losses sustained in speculative business cannot be adjusted against the profits under other items within that head. Accordingly, we answer the question in the negative. As the assessee has not appeared, we make no order as to costs.

Answer in negative.

Cases Referred.

1. AIR 1953 Nag 77
2. 1953-24 ITR 199: AIR 1953 Pun 28
3. AIR 1957 Bom 20