

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

Murlidhar Mathurawala

(M Chagla, C.J. Tendolkar, J.)

18.03.1948

JUDGMENT

M.C. Chagla, C.J.

1. The assessee was carrying on two distinct and separate businesses, one in Bombay and the other at Indore. During the year of account there was profit in the Bombay business, but the business at Indore resulted in a loss amounting to Rs. 1,55,583. The assessee claimed that this loss should be set off against the profits realised in the Bombay business. The view taken by the Income-tax Officer and the Appellate Assistant Commissioner was that the assessee's claim was not sustainable in view of the first proviso to Section 24. The Tribunal differed from the view taken by the Income-tax Officer and the Appellate Assistant Commissioner and came to the conclusion that the assessee was entitled to set off the loss suffered by him in the Indore business against the profits of the Bombay business.

2. Now, the assessee is a person resident in British India, and under Section 4(b)(ii) in his total income he would have to show not only the income which accrued or arose to him in British India but also the income which accrued or arose to him without British India, and, therefore, his income not only in the Bombay business but also in the Indore business would have to be shown in his return. Section 14 contains provisions which are in the nature of exemptions of a general nature and Sub-clause (c) of that section exempts from tax all income, profits or gains which accrue to an assessee within an Indian State unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee under Section 42.

3. The Advocate General's contention is that inasmuch as an assessee is not liable to pay tax on the income which accrues to him in an Indian State unless he brings it into British India or is deemed to have brought it into British India, the Act does not permit an assessee to set off a loss incurred by him in a business carried on by him in an Indian State against the profits earned by

him in British India, and for that purpose reliance is placed on the proviso to Section 24(1) of the Act. The main section says this: 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.

4. It is, therefore, clear that this section only deals with the right of an assessee who has made a loss under one head enumerated in Section 6 to set off that loss against a profit made by him under a different head under Section 6. The proviso on which the Advocate General relies is to this effect: Provided that, where the loss sustained is a loss of profits or gains which would but for the loss have accrued or arisen within an Indian State and would, under the provisions of Clause (c) of Sub-section (2) of Section 14, have been exempted from tax, such loss shall not be set off except against profits or gains accruing or arising within an Indian State and exempt from tax under the said provisions.

5. Now, this proviso can have no application unless, in the first place, the section itself is applicable. The Advocate General asks us to construe Section 24 in the light of the proviso and to come to the conclusion that the set-off contemplated by Section 24 is not as between two separate heads but even under the same head. That is contrary to all canons of construction and as emphasised by the Privy Council in *M. & S.M. Railway v. Bezwada Municipality*¹ where the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms. To my mind the scheme of the Act is perfectly clear. When you turn to Section 10 which deals with business it is a self-contained head. Different businesses do not constitute different heads under the Income-tax Act. All businesses wherever carried on constitute one head which falls under Section 10 of the Act, and, in order to determine what are the profits and gains of a business under Section 10, an assessee is entitled to show all his profits and set off against those profits losses incurred by him under the same head. It is only when he proceeds to set off a loss under business against a profit under some other head that Section 24 comes into operation and various considerations will arise whether he is entitled to such a set off or not. Therefore in my opinion the Tribunal was right in the conclusion it came to and we must, therefore, answer the question in the affirmative. The Commissioner to pay the Costs.

Cases Referred.

¹(1944) 47 Bom. L.R. 587, P.C