CIVIL REFERENCE.

Before Falshaw and Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, PEPSU, HIMACHAL PRADESH AND BILASPUR, SIMLA,—*Petitioner.*

1953

June, 22nd

versus

M/S HIRA MALL-NARAIN DASS, LUDHIANA,—*Respondent.*

Civil Reference No. 4 of 1952

Indian Income-tax Act (XI of 1922)—Sections 4, 6, 10, 14 and 24—Whether the losses suffered by the assessee in transactions in an Indian State in the year of account ending March, 1949, may be deducted from or set off against the profits and gains in British India in the same period in order to arrive at the assessee's taxable income under the Income-tax Act—Computation of tax under the head 'business'—Section applicable—Whether 10 or 24(1) —Interpretation of fiscal statutes—Rule stated.

The assessee, a firm resident in Ludhiana, carried on business in Ludhiana and Ahmednagar in Malerkotla State and kept account in accordance with the mercantile system of accounting. In the accounting year 1948-49 the profits which accrued to the assessee from its business in British India was Rs. 72,203 while in its business at Malerkotla the firm suffered a loss of Rs. 43,263. The question arose whether the loss from business in an Indian State could be set off against the profits from business in British India.

Held—(1), that the loss incurred by the assessee in Malerkotla can be set off against the profits made in Ludhiana for purposes of computation of tax payable under the head 'business'.

(2) that in computing the tax under the head 'business' reference has to be made only to section 10 and neither section 24(1) as it stood before 1944 nor section 24(1) with the proviso is applicable.

(3) that the manner to interpret a fiscal statute is that if the only interpretation which can be put on a provision in a fiscal statute is that which would make a citizen liable to tax, the Courts must give that interpretation, but if two interpretations can be put—one of which makes a citizen liable and the other does not—the Courts must give the latter interpretation.

V. Ramaswami Ayyangar and another v. *Commissioner of Income-tax, Madras* (1), *Anglo French Textile Company, Limited* v. *The Commissioner of Income-tax, Madras* (2), *Anuna Chalam Chettiar* v. *Commissioner of Income-tax, Madras* (3), *Commissioner of Income-tax, Bombay* v. *Murlidhar Mathurawalla Mahajan Association* (4), *Commissioner of Income-tax, Madhya Pradesh* v. *C. P. Syndicate, Nagpur* (5), *Mohan Lal-Hira Lal* v. *Commissioner of Income-tax, C. P. and Berar, Nagpur* (6), *Income-tax Appellate Tribunal, Bombay* v. *Central Provinces and Berar Provincial Co-operative Bank, Limited, Nagpur* (7), and *The Madras and Southern Mahratta Railway Co. Ltd.* v. *The Bezwada Municipality* (8), relied on; *Mishrimal Gulabchand of Beawar* v. *The Commissioner of Income-tax* (9), dissented.

Case referred by the Income-tax Appellate Tribunal with his letter R.A. No. 276 of 1951-52, dated 4th March,

(1) 18 I.T.R. 150, 157
(2) 1953 S.C.A. 402
(3) 4 I.T.R. 173, 178
(4) (1948) 16 I.T.R. 146
(5) (1952) 22 I.T.R. 493
(6) (1952) 22 I.T.R. 448
(7) I.L.R. 1946 Nag. 674
(8) I.L.R. 1945 Mad. I(P.C.)
(9) (1950) 18 I.T.R. 75

1952, under section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922) as amended by section 92 of the Income-tax (Amendment) Act, 1939 (Act VII of 1939) for the decision of the Hon'ble Judges of the High Court.

S. M. SIKRI, Advocate-General, H. R. MAHAJAN and RAJINDER, SACHAR, Advocate, for Petitioner.

TEK CHAND and S. C. MITTAL, for Respondent.

JUDGMENT

Kapur, J. KAPUR, J.—This is a case stated by the Income-tax Appellate Tribunal by their order dated the 30th of January, 1952, referring the following question to this court—

> "Whether the losses suffered by the assessee in transactions in the Indian State of Maler Kotla in the year of account ending March, 1949 may be deducted from or set off against the profits and gains in British India in the same period in order to arrive at the assessee's taxable income under the Income-tax Act, 1922."

According to the statement of the case as explained by counsel the assessee is a registered firm resident in Ludhiana. The year of assessment is 1949-50 and the accounting year is 1948-49. The assessee carried on business in Ludhiana and Ahmednagar in Malerkotla State and kept accounts in accordance with the mercantile system of accounting. In the accounting year the profit which accrued to the assessee was Rs. 72,203 and this was from its business in what at one time was British India. In their business at Malerkotla there was a loss of Rs. 43,263. There were some other items which the assessee was claiming on account of income-tax paid in Malerkotla and kitchen expenses both of which were disallowed. The loss was thus reduced to Rs. 40,344. On appeal being taken to the Appellate Assistant Commissioner a sum of Rs. 2,450 was added back but the loss of Rs. 43,263 was not allowed to be taken into consideration. The Appellate Assistant Commissioner relied on a judgment of the Allahabad High

Court in *Mishri Mal Gulab Chand of Beawar* v. *The Commissioner, Income-tax* (1). The assessee took a further appeal to the Income-tax Tribunal which was allowed and this loss was allowed to be set off. In coming to this conclusion the Tribunal followed a decision of the Bombay High Court in the *Commissioner of Income-tax, Bombay* v. *Murlidhar Mathurawallah Mahajan Association* (2). The Commissioner of Income-tax applied that the question which I have set out above be referred to the High Court and that has been done.

In order to answer the question reference may here be made to the sections which are relevant for the purpose. Section 6 gives the heads of income chargeable to income-tax and subsection (iv) thereof relates to profits and gains of business, profession or vocation. Section 10 deals with computation and 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. (2) Such profits or gains shall be computed after making the following allowances namely :—
>
> * * * * * * *"

Section 14 gives exemptions of a general nature and section 14(2)(c) was as follows at the relevant time :—

> "14(2)(c) in respect of any income, profits or gains accruing or arising to him 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, or are assessable under section 42".

(1) (1950) 18 I.T.R. 75
(2) (1948) 16 I.T.R. 146

The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh and Bilaspur, Simla
v.
M/s. Hira Mall-Narain Dass, Ludhiana

Kapur, J.

Section 16 deals with exemptions and exclusions determining the total income. It is not necessary to quote this section. Section 24 deals with computing of aggregate income and to section 24(1) a proviso was added and this section was as under—

"24. Set-off of loss in computing aggregate Income.—(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, 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 subsection (2) of section 14 have been exempt 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."

This proviso was added in 1944 and it came into force on the 1st of April of that year.

It has been submitted on behalf of the Income-tax Commissioner that the loss of Malerkotla business cannot be set off chiefly because of section 14(2)(c) of the Income-tax Act and reliance has been placed by the learned Advocate-General on *Mishrimal Gulabchand of Beawar* v. *The Commissioner of Income-tax* (1), and the reasons given in that judgment are pressed in support of his argument. I am, however, unable to agree with the conclusion and the reasons given in that judgment. In that judgment it was held that section 10 has to be read along with section 14(2)(c) and if in computing the income from a business the profits

(1) (1950) 18 I.T.R. 75

of a business carried on in an Indian State cannot be added because of section 14(2)(c) the loss of that business should also not be deducted. Now, in order to determine the profits of a business under section 6(iv) of the Income-tax Act, computation has to be made in accordance with section 10 of that Act which section uses the words, "The tax shall be payable * * in respect of the profit or gains of any business carried on by him" (the assessee). There is no reason why for the purposes of this Act "any business" carried on by an assessee should be read only as business in what was British India.

In a Madras case *V. Ramaswami Ayyangar and another*, v. *Commissioner of Income-tax, Madras* (1), it was held that in section 6 there is no basis for restricting the words business, profession or vocation to business, profession or vocation carried on only in British India and not outside it. At page 160 Viswanatha Sastri, J., dealing with argument of the assessee that it was implicit in section 10 of the Act that profits of a foreign business of residents should be calculated on equitable principles which would mean 'equitable to a layman unhampered by the specific directions contained in section 10,' said—

> "This argument seems to me to run counter to the whole scheme of the Income-tax Act. Section 2(4) which defines 'business' does not confine it to business carried on in British India. Section 4 which is the charging section expressly and definitely subjects to Indian income-tax foreign profits arising or accruing to residents in British India. Section 6 which deals with the sources of income also does not ignore or exempt either expressly or by implication, sources of income situated abroad from which residents of British India derive their income. Section 10 also is not confined to business carried on in British India."

(1) 18 I.T.R. 150, 157

The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh and Bilaspur, Simla
v.
M/s. Hira Mall-Narain Dass, Ludhiana

Kapur, J.

Their Lordships of the Supreme Court in the *Anglo French Textile Company, Limited* v. *The Commissioner of Income-tax, Madras* (1), have held (and I give the head note) that a set off under section 24(1) of the Income-tax Act can only be claimed when the loss arises under one head and the profit against which it is sought to be set off arises under a different head. When the two arise under the same head, the loss can be deducted but that is done under section 10 and not under section 24(1) of the Income-tax Act.

Reference was made by their Lordships to a decision of the Privy Council in *Anunachalam Chettiar* v. *Commissioner of Income-tax, Madras* (2). In that case Sir George Rankin observed at page 179—

> "In their Lordships' opinion whether a firm is registered or unregistered partnership does not obstruct or defeat the right of a partner to an adjustment on account of his share of loss in the firm, whether the set off be against other profits under the same head of income within the meaning of section 6 of the Act or under a different head in which case only need recourse be had to section 24(1)."

These two judgments show that in computing the profits or gains which arise under section 6(iv) of the Income-tax Act recourse can be had only to section 10 and not to section 24(1).

I may now refer to the cases in which the view taken is what is contended for by the assessee. In *Commissioner of Income-tax, Bombay* v. *Murlidhar Mathurawalla Mahajan Association* (3), the assessee was, as in the present case, a resident in what was British India and was carrying on two distinct and separate businesses, one in Bombay and the other at Indore.

(1) 1953 S.C.A. 402
(2) 4 I.T.R. 173, 178
(3) (1948) 16 I.T.R. 146

During the accounting year there was a profit in Bombay and loss at Indore and it was held by the Income-tax authorities that the loss at Indore could not be set off against the profits at Bombay. It was held that section 24(1) and the proviso to it was not applicable and the assessee was entitled to set off the loss in the Indore business against the profit of Bombay business. Chagla, C.J., said at page 149—

> "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 in 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."

A similar question again came up for decision and this time in the Nagpur High Court. In the *Commissioner of Income-tax, Madhya Pradesh* v. *C. P. Syndicate, Nagpur* (1), it was held that section 10 which deals with income from business is self contained. Profits from all businesses after deducting the allowances permissible under this section constitute profits of the assessee from business. In computing profits the losses have got to be taken into consideration. In that case also the assessee made certain profits in his business in India and the losses were suffered by him in an Indian State and the question referred to the High Court was whether one could be set off against the other.

(1) (1952) 22 I.T.R. 493

The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh and Bilaspur, Simla
v.
M/s. Hira Mall-Narain Dass, Ludhiana

Kapur, J.

In the next case from Nagpur, *Mohanlal Hiralal* v. *Commissioner of Income-tax, C.P. and Berar, Nagpur* (1), the assessee carried on business in what was British India and was also a partner in a firm doing business in Jaipur and the share of his loss was sought to be set off against the profits made from his business in British India. It was held that in order to arrive at the taxable income under the head 'business' loss of profits or gains from business done in an Indian State has to be deducted from the profits and gains of business in (British) India.

In *Income-tax Appellate Tribunal, Bombay* v. *Central Provinces and Berar Provincial Co-operative Bank, Limited, Nagpur* (2), the first and second provisos to section 8 of the Income-tax Act, were considered and it was held that interest paid by the assessee on the amount borrowed for purposes of investing in securities whether taxable or tax-free has to be deducted from the interest on both kinds of securities and the remainder alone can be taxed.

The weight of authorities, therefore, is in favour of the view that in computing the tax under the head 'business' reference has to be made only to section 10 and neither section 24(1) as it stood before 1944 nor section 24(1) with the proviso is applicable.

Section 14(2)(c) does not, in my opinion, apply to facts of the case before us. Section 4(1) of the Act provides—

> "4(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which * * * *".

Under this Act the total taxable income would include all profits from whatever source derived. Section 16(1)(a) also provides for the inclusion of

(1) (1952) 22 I.T.R. 448
(2) I.L.R. 1946 Nag. 674

all income in determining the total income of the assessee. If the profits were to be calculated as contended for by the learned Advocate-General it will come to this that the total income for purposes of section 16 will be less than the sum on which the income-tax will actually be payable which in my opinion would lead to absurdity and it would also mean that under section 10 the words "profits of any business" will have to be circumscribed to "business in what was British India alone" and the word "all" in section 4(1) will also have to be read in a similar manner.

The learned Advocate-General then submits that on the analogy of proviso to section 24(1) of the Income-tax Act, the losses incurred in an Indian State should be excluded in computing the amount of profits under section 10. To this I am unable to agree, and if section 24(1) was applicable only to a case where computation has to be made by setting off losses under one head against profits under another, the addition of the proviso cannot enlarge its scope: see *The Madras and Southern Mahratta Railway Co., Ltd.* v. *The Bezwada Municipality* (1), and Craies on Statute Law page 201. Nor can a fiscal statute be interpreted in this manner. If the only interpretation which can be put on a provision in a fiscal statute is that which would make a citizen liable to tax, the Courts must give that interpretation, but if two interpretations can be put—one of which makes a citizen liable and the other does not—the Courts must give the latter interpretation. But in the present case no provision of the Income-tax Act has been brought to our notice which makes it clear that the assessee is liable. On the other hand precedents show that in cases like the one which is before us the losses incurred in Indian States can be set off against profits made in what was British India, and I must give effect to this interpretation.

I would, therefore, answer the question which has been referred to us in the affirmative and hold that the loss incurred by the assessee in Malerkotla

(1) I.L.R. 1945 Mad. 1 (P.C.)

The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh and Bilaspur, Simla

can be set off against the profits made in Ludhiana for purposes of computation of tax payable under the head 'business'.

The assessee will have his costs in this court. Counsel's fee Rs. 250.

FALSHAW, J.—I agree.