

Karnataka High Court Karnataka Light Metal Industries ... vs Commissioner Of Income Tax. on 11 December, 1996 Equivalent citations: (1997) 139 CTR Kar 154 Author: R Babu JUDGMENT RAJENDRA BABU, J. : In this reference arising under s. 256(2) of the IT Act three questions have been referred for our opinion and they are as follows : “1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the applicant was not entitled to set off or carry forward business loss of the earlier years against the income for the relevant year ? 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the business in which the loss was originally sustained had been discontinued in 1975 ? 3. Whether, on the facts, the Tribunal was right in holding that the business carried on by the applicant during the relevant year was a different one ?” 2. The assessee is a company and was engaged in the job work of flattening of wires supplied by M/s Karnataka Steel & Wire Products Ltd. (KSWP). The assessee has taken on lease the premises belonging to M/s Karnataka Steel & Wire Products Ltd., and set up its own machinery therein for purpose of its activities. On account of certain problems KSWP closed down its factory in the year 1975. Thereafter it could not get any job work from M/s Karnataka Steel & Wire Products Ltd. and it also went into financial doldrums and a provisional liquidator was appointed in the year 1980 who took charge of the properties in question and sealed the factory premises pursuant to an order made by this Court on 12th Nov., 1982. Thus the assessee could not remove its machinery for purpose of carrying on its business activity, though the same were released subsequently in December, 1982. During the relevant year the machinery was not available to the assessee and, therefore it could not carry on its activity of flattening of wires supplied by the KSWP. The assessee also had earned certain income by purchase and sale of M. S. wires and sodalime. For the asst. yr. 1982-83 the assessee claimed the loss suffered in the early years under the head business against the income derived for the year in question. The assessing authority declined to set off the loss against the income on the ground that the business of flattening of wires had been discontinued and the present business carried on by the assessee had no connection with the business activity carried by it earlier. Aggrieved by it the assessee preferred an appeal unsuccessfully. The matter was further taken in second appeal before the Tribunal equally unsuccessfully. Hence this reference at the instance of the assessee. 3. On behalf of the assessee it was submitted that there is no discontinuance in the business though there was a temporary lull due to non-availability of plant and machinery and the business of purchase and sale of M. S. wires or sodalime was part of the same business since there was interlacing of funds and unity of control. On that basis it was pleaded that there was no dis-continuance of business. Sri. Indrakumar, learned senior standing counsel for the Department submitted that the business of the job work of flattening of wires had come to an end in the year 1975 itself. Therefore that business was not carried on subsequently at all. The subsequent activity of the assessee is only a trading activity having changed over to the business of purchase and sale of sodalime and wires and therefore the two lines of business have no connection with one another and thus it must be said that

the assessee had resumed his old business to constitute resumption of business for the purpose of s. 72(1)(i) of the IT Act. He, therefore, submitted that the view taken by the Tribunal was justified and calls for no interference at our hands. 4. In order to get the benefit of set off or carry forward of business loss of earlier years against the income for the relevant year is that the business must be continued and such business must be of such nature which has been carried on by the assessee. Therefore, what we have to see in the present case is whether the assessee had adopted to different lines of businesses altogether which could never be said to be of similar nature nor it could be said that the two businesses are one and the same. It may be useful to refer to a few decisions to understand the nature of the problem. In *Produce Exchange Corporation Ltd. vs. CIT* (1970) 77 ITR 739 (SC) the question of carry forward and set off of loss arose in a case of a company which was carrying on business as a dealer in diverse commodity and also in stocks and shares. In that case the High Court had taken the view that the essential matter to be considered was the nature of the two lines of business and not only their unity of control and, therefore, it could not be held that the whole trading activity formed one business. The Supreme Court did not agree with the view of the High Court and held that the decisive test was unity of control and not the nature of the two lines of business. It is also noticed by the Supreme Court that the share business and the other business carried on by the assessee constitutes the same business within the meaning of s. 24(2) of the Indian IT Act, 1922 which is akin to s. 72 of the IT Act, 1961. In *Standard Refinery & Distillery Ltd. vs. CIT* (1971) 79 ITR 589 (SC) the assessee was carrying on the business of manufacture of sugar and distillery as well as business of dealing in shares. The Supreme Court held that the share transactions as well as the business of manufacture of sugar and other commodity constitutes the same business within the meaning of s. 24(2) of the Indian IT Act, 1922. Referring to the decision of the King Bench in *Scales vs. George Thompson & Co. Ltd.* (1927) 13 Tax Cases 83 (KB) Rowlatt J., had observed that before two or more businesses can be considered as “the same business” they should not be easily separable and there must be a dovetailing of the one with the other. Adverting to the concepts of interconnection, interlacing, interdependence and unity, the Supreme Court observed, they are not free from ambiguity but certain objective tests have been laid down for finding out the existence of inter-connection, interlacing, interdependence or unity between two or more businesses. If a person is engaged in one activity of business and for some reason or the other that activity had to be closed down and wants to take up a new line of business it must be said that he is not carrying on business as long as the same person is carrying on both the businesses. As a person carries on two lines of business at two different points of time, may be in some cases the same person may carry on several activities right from the inception or in the course of carrying on business he may change over to another line, that by itself does not constitute a separate business. What is to be seen in this case is business unity of control so far as the business is concerned. In this case it is clearly established. Because the same person has carried the job work of flattening of wires and also trading in purchase of sodalime, M. S. wire etc. 5. The

Tribunal did not appreciate the matter in the line in which it should have been looked at with reference to the tests laid down by the Supreme Court in the decision referred to by us. In this view of the matter we answer the questions referred to us in the negative and in favour of the assessee.