Commissioner Of Income-Tax, Kerala vs Joseph John. on 5 May, 1967

Equivalent citations: [1968]67ITR74(SC), AIRONLINE 1967 SC 66

JUDGMENT

RAMASWAMI J. - These appeals are brought, by special leave, on behalf of the Commissioner of Income-tax, Kerala, from the judgment of the Kerala High Court dated April 5, 1962, in R. As. Nos. 1089-1090 of 1958-59.

The respondent (hereinafter called the "assessee") is an oil miller who purchases cocoanuts and copra for extraction of oil in his own expellers or chekkus for the market. The purchases of the raw materials, cocoanuts and copra, are made ready for spot delivery as also for delivery in Vaida dates. The sales of oils were also made on the same basis by the assessee. All these contracts, ready and forward, are on a large scale and are put through either the Alleppey Oil Millers Association, commission agents or other merchants. The aforesaid contracts are of two varieties; those on which delivery was intended and those intended to be settled on the Vaida dates, only for price differences. The latter type, forward contracts, for purchase or sale, are all entered in a single account called "Oil Vaida Price Difference Account". During the calendar years 1952 and 1953, which are the "previous years" corresponding to the assessment years 1953-54 and 1954-55, the assessee entered into several forward contacts for purchase of copra and sale of oil through the "Alleppey Oil Merchants Association" and recorded in the "Oil Vaida Price Difference Account" in the manner aforesaid on which the following net losses were incurred :

Calendar year 1952 Calendar year 1953 (Assessment year : 1953-54) (Assessment year : 1954-55) Rs.

Rs.

Differences paid 1,48,002 1,77,915 Less : Differences received 1,21,754 1,63,907 Net loss 26,248 14,043 The Income-tax Officer refused to deduct the aforesaid losses in the assessment, holding that they ware losses from separate speculative business within the meaning of Explanation 2 to section 24(1) of the Income-tax Act, 1922 (hereinafter referred to as "the Act"), requiring to be set off only in future years against similar speculative business profits. The assessee appealed to the Appellate Assistant Commissioner who allowed the appeals. The Commissioner of Income-tax further took the matter in appeal to the Appellate Tribunal, which remanded the case for further investigation with a view to ascertain the extent to which the transactions would come within the meaning of proviso (a) to Explanation 2 of section 24(1) of the Act. On further hearing of the appeal after remand, there was a difference of opinion

between the two Members of the Tribunal on the following point :

"Whether the losses of Rs. 26,248 and Rs. 14,043 incurred by the assessee in the settlement of forward contracts in cocoanut oil in which also he traded during the calendar years ended 1952 and 1953, the previous years for the respective assessment years 1953-54 and 1954-55, are deductible as business losses under section 10 in the respective assessments ?"

Thereupon the President made a reference under section 5A(7) of the Act to three other Members of the Tribunal including himself. All the three members agreed with the Judicial Member and held that the two sums mentioned are not deductible as business losses under section 10 of the Act. At the instance of the assessee, the Appellate Tribunal referred the following questions of law for the opinion of the High Court under section 66(1) of the Act :

"(1) Whether there are materials for the Tribunal to hold that the aforesaid transactions constitute speculative transactions in the nature of a business within the meaning of the first proviso to section 24(1) ?

(2) Whether the losses are deductible under section 10 as business losses of the two assessment years 1953-54 and 1954-55 ?"

By its judgment dated April 5, 1962, the High Court answered the first question in the negative and the second in the affirmative. In other words, both the questions were answered in favour of the assessee.

The answer to the second question is concluded by the decision of this court in Commissioner of Income-tax v. Kantilal Nathuchand, Sami in which it was held that the expressions "any such loss" in the first part and "any loss" in the second part of the second proviso to section 24(1) of the Act refer to the loss computed for the purpose of the main part of section 24(1) taken together with the first proviso thereto and do not comprise within their connotation the loss in speculative business which is not to be taken into account under the first proviso. Section 23(5)(a) applies only to the total income of a registered firm which has been assessed under sub-section (1), (3) or (4) of section 23, and does not apply to any other income or loss. The first proviso to section 23(5)(a) does not apply to loss incurred by a registered firm in speculative business which is to be kept apart under the first proviso to section 24(1), and is not to be taken into account when computing the total income of the firm under section 23(1), (3) or (4). It was further held in that case that speculation loss of a registered firm kept apart under the first proviso to section 24(1) in computing its total income for one year could not be apportioned between the partners and the registered firm could claim to carry forward such loss and have it set off against speculation profit of the firm of a later year in accordance with section 24(2).

As regards the first question, the High Court took the view that the finding of the Appellate Tribunal that the transactions are speculative transactions and not hedging transactions seemed to be based on a misapprehension of the ambit of the assessees business. It was observed by the High Court that

the Tribunal had proceeded on the basis that the assessee was only a miller who bought copra, crushed it any then sold the resultant oil. The High Court said that the assessee had, as a matter of facts, the business of buying and selling quite apart from his business as a miller. The assessment order also clearly showed that, in addition to the oil produced in the assessees oil mill, he was selling oil purchased by him. It was argued on behalf of the appellant that the finding of the Appellate Tribunal that the transactions were speculative transactions and not hedging transactions was a finding of facts based on proper evidence and the High Court acted beyond its jurisdiction in interfering with that finding. In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. Upon examination of the order of the Appellate Tribunal we are satisfied that the majority of the Appellate Tribunal entertained no misapprehension with regard to the scope of the assessees business and the High Court had no justification for saying that the Tribunals conclusion was based upon any such misapprehension. It is manifest that the finding of the Appellate Tribunal that the transactions were speculative transactions and not hedging transactions is essentially a finding on a question of fact and it is not open to the High Court to interfere with that finding unless there is no evidence to support that finding or it is perverse In the present case, there is the admission of the assessee before the Appellate Assistant Commissioner that he was carrying on two different businesses - one of cocoanut oil and the other of speculative in cocoanut oil. By its remand order dated November 29, 1956, the Appellate Tribunal directed the Appellate Assistant Commissioner to ascertain whether the speculative transactions could be said to constitute "hedging" operations and part of the normal trading activity of the assessee. After receipt of the remand order the Appellate Assistant Commissioner required the assessee to produce a full account of the "hedging" transactions out of the "oil satta price difference account" maintained in his books of account. The assessee was required to give full details with regard to each of these contracts but the assessee expressed his inability to furnish these details separately and said that all his transactions both of speculation and hedging were mixed up in the "oil satta price difference account". It was admitted by the assessee that no separate account of speculative transactions and hedging transactions was maintained and it was not possible to segregate from the so-called account entitled "oil satta price difference account" the transactions which are purely speculative from the hedging transactions. It was therefore held by the Tribunal that there was no evidence produced by the assessee of the hedging transactions and the transactions in question must be held to be speculative transactions which are in the nature of a business within the meaning of the first proviso to section 24(1) of the Act. Explanation 2 of section 24(1) of the Act states :

> "A speculative transaction means a transaction in which a contract for purchase and sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips :
>
> Provided that for the purposes of this section, -
>
> (a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;

shall not be deemed to be a speculative transaction."

It is manifest that the burden of proof was upon the assessee to show that the transactions are merely hedging transactions within the meaning of proviso (a) and in the absence of any evidence produced on the part of the assessee, Explanation 2 applied to the case and the transactions must be held to be speculative transactions as defined therein. We are accordingly of the opinion that there was sufficient material before the Tribunal to hold that the transactions constituted speculative transactions in the nature of a business within the meaning of the first proviso to section 24(1) of the Act and the first question referred to the High Court must be answered in the affirmative and against the assessee.

For these reasons we set aside the judgment of the Kerala High Court dated April 5, 1962, and the answers to the questions will be : (i) in the affirmative, (ii) in the negative. We accordingly allow these appeals with costs. One hearing fee.