Commr. Of Income-Tax, United ... vs Lachhman Das Mool Chand on 14 November, 1952

Equivalent citations: AIR1954ALL53, [1953]24ITR298(ALL), AIR 1954 ALLAHABAD 53

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66 (1), Indian Income-tax Act, and the point raised is a nice question of law on which learned counsel are agreed that there is no previous decision. The question formulated by the Tribunal is as follows:-

> "Whether in the circumstances of the case, a loss of Rs. 19,228/- sustained by the assessee in the previous year relevant to the assessment year 1942-43 could legally be treated as a carried forward loss in the assessment year 1944-45 and be set off under the provisions of Section 24 (2) I. T. Act, against the profits from the same business for the previous year relevant to the 1944-45 assessment in spite of the fact that it was not so set off although there were profits from the same business to cover the loss in the previous year relevant to 1943-44 assessment?"

2. The facts are really not in dispute. The assessee carried on business at Delhi and at Agra. At the head office at Agra the assessee carried on business in ready goods in colour, yarn and 'Kairana' and also entered into forward contracts in 'sonth, kali mirch', grain and gold. The branch shop at Delhi carried on for-ward contract business in yarn, silver, grain and gold. The Income-tax Officer dissected the two businesses into two portions considering the business in ready goods as one business and the forward contract business a separate business. In the assessment year 1942-43 the profits and loss were worked out by the Income-tax Officer and it was found that the profits from the business in ready goods in that year were much less than the loss incurred in speculation, the difference being a sum of Rs. 19,228/-. After the profits were set off against the loss in accordance with the provisions of Section 24 (1), Income-tax Act, the loss was carried forward to the next year.

In the year 1943-44 it was found that while the business in ready goods had ended in profit there was a further loss in speculation and that loss was set off against the profits made, but as the Income-tax Officer held that the two businesses were separate he did not allow the sum of Rs.

19,228/- which was the loss carried forward from the previous year to be set off against the profits of the business in ready goods in the year 1943-44. The assessee submitted to the assessment and the case did not come up to the Appellate Tribunal. In the year 1944-45 the Income-tax Officer again calculated the profit and loss of the dealings in forward contract business separately and found that there was a loss in the forward contract business but the profits in the dealings in ready goods exceeded the losses. The Income-tax Officer, however, again refused to allow the amount of Rs. 19,2287-which had been carried forward from the year 1942-43 to be set off against the profits of 1944-45. The case came up to the Tribunal and in its appellate order the Tribunal carefully went into the facts and came to the conclusion that as a matter of fact the assessee was carrying on only one business and the Income-tax Officer was not entitled to dissect the business into two parts and deal with the transactions in ready goods separately from the forward contracts. Having come to the conclusion that the profits made were from the same business from which the loss of Rs. 19,2287- had been incurred the Tribunal allowed a set off. On behalf of the Commissioner an application was made for a reference that the Tribunal was not entitled to allow the set off as the case did not come under Section 24 (2), Income-tax Act. The Tribunal agreed that a point of law did arise out of the appellate order and referred the question mentioned above for decision by this Court.

3. Reliance is placed on the language of Section 24 (2), Income-tax Act, and it is urged that a set off in a subsequent year can be allowed only if the case comes within the express words of Section 24 (2), Income-tax Act. Learned counsel has pointed out that previous to the amendment in the year 1939 the loss of one year could never be carried forward and set off against the profits in a subsequent year. It was by the amendment in. 1939 that it was provided that if a loss had been incurred in any particular business which could not be set off against the total profits made in the same year then that loss could be carried forward to the next year against the profits made from the same business and this process was to continue for a maximum period of six years.

4. The relevant portion of Section 24 (2), Income-tax Act, is as follows :-

> "Where any assessse sustains a loss of profits Or gains in any year .....under the head 'profits and gains of business, profession or vocation', and the loss cannot be wholly set off under Sub-section (1) (from the income, profits and gains of that year) the portion not so set off shall be carried forward to the following year and set off against the profits and gains....."

Learned counsel for the Commissioner has urged that a loss for the previous year can be yet off against the profits of a subsequent year only if that loss could not be wholly set off under Sub-section (1) in that year and it is the portion which could not be so set off that can be carried forward. In other words, the argument is that the finding of the Appellate Tribunal amounts to this that the loss of Rs. 19,228/-should have been set off in the assessment year 1943 and it cannot, therefore, be urged that the loss could not be wholly set off in that year. Learned counsel has urged that the section provides for a case where the profits of the subsequent year are not sufficient to set off the loss in its entirety and it is only in that case, where the profit is either nil or less than the amount of the loss, that the loss can be carried forward to be set off against the profits from the same business in a subsequent year. It is pointed out that on the finding of the Appellate Tribunal

that it was the same business and there were no two separate businesses it is not possible to urge that the loss could not be wholly set off in the subsequent year 1943-44 and this sub-section is therefore, not applicable.

5. The fact, however, remains that in the year 1943-44 the assessee wanted that this loss of Rs. 19,228/- which had been carried forward in accordance with the provisions of Section 24 should be set off against the profits made in that year and the Income-tax Officer had held as follows:-

> "In this case a sum of Rs. 19,228/- has been brought forward from last year on account of loss. The entire loss is on account of speculation. The figures of this year showed that there was again a loss in speculation, hence the entire amount has to be earned forward."

On behalf of the Commissioner the argument in effect is that the Income-tax Officer had made a mistake in 1943-44 and it was due to that mistake that the loss had not been set off and had been carried forward and if the asses-see had filed an appeal under S. 30 he might have had the mistake corrected. That the asses-see cannot claim that the loss be set off in 1944-45 when it should have in fact been set off in the previous year.

6. The argument, at first sight, appears to be attractive but it is fallacious. Tho Income-tax Officer rightly or wrongly had held in 1943-44 that the loss could not be wholly set off and should be carried forward. This was an order under Section 24, Income-tax Act. It is not open to the Income-tax Department to claim that the Income-tax Officer had made a mistake in the previous year and thus deprive the assessee of his rights to have the loss set off from the profits of the next year. It is true that the Tribunal has, in its appellate order, in considering the facts, come to the conclusion that there was only one business from the very beginning and the Income-tax Officer, had no right to dissect that business into two separate businesses and deal with the profits and losses separately, but that does not mean that that opinion, of the Tribunal has nullified in any way the effect of the previous order of the Income-tax Officer for the assessment year 1943-44.

In the appeal against the order of the Income-tax Officer in the assessment year 1944-45 the Tribunal could only deal with the correctness or otherwise of the order of the Income-tax Officer passed in that year. The previous order of the Income-tax Officer had become final and, in our view, it was not open to the Income-tax Department to go back on that order and say that the Income-tax Officer had made a mistake by reason of which they had refused to grant a relief in a particular year and on the basis that that order was wrong they would now refuse to grant that relief in this year also. It is true that the rule of 'res judicata' applies to income-tax cases only to a limited extent as was pointed out by a bench of this Court in --'Kamlapat Motilal v. Commissioner of Income-tax, U. P'. AIR 1950 All 249 (A) but it is one thing to say that an order in one year will not be taken as binding in an assessment for a subsequent year and quite another that the Income-tax Department can go back on their own order for a particular year and say that as that order was wrong the assessee should be deprived of a relief which he was entitled to get under that order.

We are inclined to the view that during the assessment year 1943-44 the order of the Income-tax Officer that the amount of Rs. 19,228/- could not be set off from the profits made in that year had become final and, if that order is treated as such, then there is nothing to bar the Tribunal from considering whether in the year 1944-45 there were profits against which that amount could be set off. The argument in effect on behalf of the Commissioner is that the amount could not be set off in 1944-45 because the amount should have been set off in 1943-44 and the Income-tax Officer had made a mistake in holding that the amount could not be set off in that year. We do not think it is open to the Commissioner to go back on an order passed by the Income-tax Officer in a particular year which had become final and try to go behind that order in considering the effect of that order in a subsequent year. In that view of the matter when the Income-tax Officer had held that the amount of Rs. 19,228/- could not be set off in 1943-44 as there were no profits against which the amount could be set off the Appellate Tribunal was entitled in the assessment year 1944-45 to set off that amount against profits made from the same business if it came to the conclusion that in that year there were profits from such business against which the previous loss could be set off. The finding that in the year 1944-45 there were profits from the same business is a finding of fact. It is not challenged and there is no reference on that question before us. On the finding that there were profits from the same business in the year 1944-45 and on the previous finding given by the Income-tax Officer that in the year 1943-44 there were no such profits from the same business in that year against which the amount could be set off, Section 24 (2) Income-tax Act, was clearly applicable.

7. We have already said that the facts are more or less admitted and there is really no dispute. In that view and in the view that we have expressed above the words "although there were profits from the same business to cover the loss in the previous year relevant to 1943-44 assessment" occurring in the last few lines of the question referred to us should really be omitted as in our view it is not open to the Department to go back on the order of the Income-tax Officer for the assessment year 1943-44 and urge that the profits in that year were from the same business and could cover the loss.

8. Our answer to the question referred to us therefore, is that in the circumstances of the case the Tribunal was entitled to set off the amount of Rs. 19,228/- brought forward from the year 1942-43 against the profits made in the year 1944-45 on its finding that these were profits from the same business.

9. The assessee is entitled to his costs which we assess at Rs. 300/-