# Raghunath Prasad vs Commissioner Of Income-Tax, U. P. And ... on 10 January, 1955

## Equivalent citations: [1955]28ITR45(ALL)

JUDGMENT

MALIK, C.J. - The assessee Raghunath Prasad was assessed to income-tax and excess profits tax for the year 1945-46. He made an application for a reference under section 66(1) of the Indian Income-tax Act and the Tribunal referred to us two questions for decision which were as follows :

> "1. Whether in the circumstances of the case, the loss of Rs. 4,483 was an allowable loss having regard to proviso to section 24(1) of the Income-tax Act ?
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> 2. Whether in the circumstances of the case, the litigation expenses amounting to Rs. 6,338 represented admissible business expenditure under section 10(2) (xii) now (xv) of the Income-tax Act ?"

The assessee filed an application that there were certain other questions of law that arose for decision which should have been referred to us. By our order dated the 29th of October, 1952, we directed that further questions of law which arose in the case should be referred to us for decision and in compliance with the order two other questions that have been referred are as follows :-

> "(a) Whether on the facts and circumstances of this case after the partial partition had taken place in the Hindu undivided family, the two members Ram Sarup and Radhey Lal continued to carry on the business of money-lending although no fresh loan was advanced by them but only they took steps to realise these loans along with interest due on them ?
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> "(b) Whether on the facts and in the circumstances of this case the amount of Rs. 15,612 in the hands of the assessee is income taxable under the Indian Income-tax Act ?"

The facts though not fully set out in the original statement of the case now appear from the fresh statement made by the Tribunal. Makkhan Lal, grandfather of the assessee, had a number of business. He had three sons, Ram Sarup, Narain Das and Radhey Lal. Narain Das predeceased him leaving an adopted son Amar Nath. Makkhan Lal in his lifetime gave Amar Nath certain assets with which Amar Nath started his separate business and we are no longer concerned with him. On the death of Makkhan Lal his two business, one in cloth and the other in grain, and the five mortgage loans advanced by him to Pyare Lal Anandi Lal, Jogendra Pal Singh, Har Prasad Baijnath, Lachhman Das Karorimal Basdeo, Ram Sarup and Lallamal Hardeodas came under his will to his two surviving sons.

The two business in cloth and grain were continued by Ramsarup and Radhey Lal but they did not carry on any further money-lending business.

On the 25th of August, 1935, there was a partial partition between Ramsarup and Radheylal; Ram Sarup was given the cloth business while Radhey Lal was given the grain business. The five mortgage debts were, however, kept joint and it was agreed between the two brothers that when the money was realised it would be divided between them half and half.

The assessee, Raghunath Prasad, is the son of Radhey Lal. He resided at Agra but carried on speculation business at various places including Jaipur in Jaipur State through a firm Damodar Das Sukhdeo Prasad. The speculation business at Jaipur resulted in a loss of Rs. 4,483. The Income-tax Officer did not allow this loss treating it as a loss in business which was carried on outside British India and not allowable in view of the proviso to section 24 of the Act. The first question, therefore, relates to this loss.

Section 24(1) of the Act is as follows :-

> "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 :
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> 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....."

The rest of the provision is not relevant for our purposes and need not be quoted here. The section relates to the loss under one head being set off against income, profits or gains under any other head in the chargeable accounting period and the proviso makes an exception that if the loss of profits or gains which are exempt under section 14(2) (c) has accrued or arisen within an Indian State then that loss can be set off only against profits or gains made within an Indian State and exempt from tax under the same provision.

Section 14(2) (c) provides that the tax shall not be payable by an assessee -

> "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."

Section 24(1) read with section 14(2) would, therefore, make it clear that a loss of profits or gains within an Indian State can be set off only against the profits and gains which are not liable to tax by reason of the provisions of section 14(2) (c), that is, they can be set off against profits and gains

accruing or arising within an Indian State which have not been received or deemed to be received in or brought into British India. On a plain reading of the two sections, therefore, the answer to the question must be in the negative.

Learned counsel for the assessee has, however, not confined himself to the question referred to us whether the loss of Rs. 4,483 was an allowable loss having regard to the proviso to section 24(1) of the Income-tax Act and has argued that the question should be reframed and we should decide whether the amount was an allowable loss independently of the said proviso.

In In re Mishrimal Gulabchand of Beawar it was held by a Bench this court that the loss incurred in an Indian State should be ignored in determining the assessees income from business. In that case the assessee was carrying on business in British India and had made a profit, while in the business carried on by him in an Indian State he had incurred a loss, and the question was whether his taxable income should be deemed to be the balance left after deducting the loss incurred in the Indian State. It was pointed out that section 24(1) of the Indian Income-tax Act would not apply to the case as it dealt with a case of adjustment of losses under one head of income against the profits under another head, both incurred in an Indian State. It was also pointed out that for adjustment of losses at one place against the profits at another place a special provision was not necessary as under section 10 of the Income-tax Act in preparing the balance sheet the result after taking all the profits and losses into account under a particular head would be the assessable income. In view, however, of the provisions of section 14(2) (c) it was held that losses incurred in business carried on in an Indian State could not be taken into account under section 10 of the Income-tax Act in working out the total assessee income for any particular year.

Learned counsel for the assessee has drawn our attention to decisions of various High Courts in India and has urged that the view taken in the case of Mishrimal Gulabchand has been dissented from in other Courts in India and has submitted that the case might be referred to a larger Bench so that the point might be reconsidered. The decision of this Court is dated the 26th of October, 1949. On November 16, 1949, a Bench of the Madras High Court in V. Ramaswami Ayyangar and Another v. Commissioner of Income-tax, Madras, held at pages 156 and 157 as follows :-

> "Under section 6 various sources of taxable income are indicated and section 10 provides that the assessee is liable to pay tax 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. Under sub-clause (2) of that section such profits or gains have to be computed after making the allowances enumerated in that clause. Nowhere in this section or in section 6 is there any basis for restricting the words business, profession or vocation to business, profession or vocation carried on only in British India and not outside it.
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> ..... When the language of the statute is general and the context does not justify any restriction and when it is conceded that the legislature has the power to enact laws having extra-territorial operation, it is difficult to accept and construe the section in the manner contended..... The argument therefore must be rejected and the section

must be read as applying not only to business in British India but also outside it."

In that case, however, the business that was carried on was not in an Indian State but in Ceylon.

The case directly in point in which the contrary view was taken is Commissioner of Income-tax, Bombay City v. Murlidhar Mathurawalla Mahajan Association. In that case the assessee was carrying on business in Bombay and another business at Indore in an Indian State. The assessee claimed that the loss sustained in the Indore business should be adjusted against the profits realised in the Bombay business. The learned Chief Justice observed :

> "To many mind the scheme of the Act is perfectly clear. When you turn to section 10 which deals with business it is self-contained head. Different business do not constitute different heads under the Income-tax Act. All business 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."

In a recent decision in Tricumlal Girdharlal V. Commissioner of Income-tax, Bombay North, Chagla, C.J., has reaffirmed the view taken by him in Murlidhars case where the learned Chief Justice said :

> "We reaffirm the principle which we enunciated in that case, and that principle really comes to this, that if an assessee carries on a business in the taxable territories and another business in a Part B State, for the purpose of income-tax both the businesses constitute one business and the income under the head business must be computed by either totalling the profits made by both the businesses or if there is a loss in one business by setting off the loss in one business against the profit of the other."

That view was followed by a Bench of the Hyderabad High Court in Commissioner of Income-tax, Hyderabad v. Baliram Santhoba where Ansari, J., suggested that section 14(2) (c) should be read not with section 10 but with section 4(1) of the Indian Income-tax Act.

The Bombay view was followed by a Bench of the Hyderabad High Court of East Punjab in Commissioner of Income-tax, Punjab v. Hira Mall Narain Das.

The only other cases in point to which reference has been made are the decisions of the Nagpur High Court in Mohanlal Hiralal v. Commissioner of Income-tax, C. P. and Berar, Nagpur, and in Commissioner of Income-tax, Madhya Pradesh v. C. P. Syndicate, Nagpur.

In Mohanlal Hiralals case the learned judges relied on the decision of the Bombay High Court in Murlidhars case and held that losses incurred in an Indian State have to be deducted to ascertain the profits from business.

The question was more fully discussed in Commissioner of Income-tax, Madhya Pradesh v. C. P. Syndicate, Nagpur and the learner judgers observed as follows :-

> "Under section 4(1) read with section 16(1) (a), a+b+c is the total income liable to tax, but section 14(2) (c) exempts income from payment of tax. So the resident will have to pay income-tax on a+c at the rate of tax payable on a+b+c. In the event of loss in an Indian State, the total income computed under the Act will be a-b+c and the tax will be paid on this amount as there are no income, gains or profits to which section 14(2) (c) would apply."

In other words, loss is to be treated as negative profit.

There can be no doubt that in working out the profits under various heads under section 10 of the Act the Income-tax Officer has to take into consideration the total result of all the businesses that may have been carried on in the relevant year by the assessee and it is the result which are the profits or gains of business in the chargeable accounting period. If the assessee carries on three types of business and he has made profits in two and loss in the third, the Income-tax Officer cannot ignore the loss in the third and say that in that business there was no profit made and take into account the profits made in the other two businesses. In computing the profits under section 10 the Income-tax Officer must take into account the result of all the businesses that were carried on by the assessee and deduct the losses from the profits to determine the figure which can be held to be profits or gains from business.

The question, however, arises whether the Income-tax Officer should take into consideration not only the profits or losses in business carried on within the taxable territory but also profits or losses from business made at a place specially excluded under the Act.

The Income-tax Officer has to work out two figures, one, the total income for purposes of rate, and the other, the taxable income on which tax is levied.

It is not necessary for us in this case to deal with the liabilities of a resident, an ordinarily resident, and non-resident, the liability of each being different. If for purposes of rate only income which is not taxable has to be taken into consideration, the question remains whether income, profit or gain, which has been specially exempted from taxation, must be taken into consideration in computing the profits or gains for purposes of taxation.

In this connection section 6 of the Act is important which lays down that :-

> "Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely :-
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> (i) Salaries.

(ii) Interest on securities.

(iii) Income from property.

(iv) Profits and gains of business, profession or vocation.

(v) Income from other sources."

The section makes it abundantly clear that it deals with heads of income which are chargeable to income-tax Sections 7, 8, 9, 10, 11 and 12 deal with the various heads mentioned in section 6. Section 10 starts with the words :

> "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."

To our minds, this section also deals with profits or gains of business, profession or vocation which are liable to tax.

Section 14(2) (c) provides that :

> "The tax shall not be payable by an assessee - (c) in respect of any income, profits or gins 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."

Section 16(1) (a) provides that : "(i) In computing the total income of an assessee - (a) any sums exempted under the second proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15 shall be included and any sum exempted under section 15A shall also be included except for the purpose of determining the rates at which income-tax (but not super-tax) is payable by the assessee to whom the exemption is given."

If, instead of incurring a loss of Rs. 4,483 in the business carried on in the Jaipur State, the assessee had made a profit of an equal amount from business there, it must be conceded that in making the computation for tax purposes by reason of the provisions of section 14 (2) (c) the Income-tax Officer cannot take the profit into consideration, the amount not being income which was liable to tax. There is, therefore, no reason why he should, in making a computation for tax purposes, take into account losses incurred at Jaipur. For tax purposes computation of neither the profit nor the loss at Jaipur will be relevant under section 10 of the Act, through for the purpose of determining the rate such income or such loss may be relevant.

Reading these sections together the result appears to us to be that in computing the income for rate purposes the Income-tax Officer may have to take into account the profits made in an Indian State and may also have to deduct the losses sustained there, but in computing the income for tax

purposes neither the profits made nor the loss incurred in an Indian State can be taken into account.

In this case the question has not been raised whether for rate purposes the loss incurred in the business at Jaipur can or cannot be taken into account. It appears to us that it would be fair when the profits have to be taken into account for rate purposes that the losses in an Indian State should also be taken into account for those purposes.

Having considered the matter, we see no reason to differ from the opinion expressed by this Court in Mishrimal Gulabchand of Beawar, In re though we do so with great diffidence in view of the fact that a contrary view has been taken by the learned Chief Justice of Bombay and by several High Courts in India.

The second question arises under these circumstances : The assessee was a partner of the firm Lallamal Hardeodas of Hathras. He filed a suit against certain partners of the firm for rendition of accounts. The question was whether the amount of Rs. 6,338 spent was an expenditure laid out or expended wholly and exclusively for the purpose of the business. The Tribunal has held that the expenditure was not incurred for the purposes of the activities of the business but to enforce a right against a partner which, according to the Tribunal, was quite a different thing and was, therefore, not allowable as an admissible business expenditure. On the finding recorded by the Appellate Tribunal that the amount was not laid out or expended wholly and exclusively for the purposes of the business it could not come under the provisions of section 10(2) (xii) now (xv) of the Income-tax Act. The point is covered by a decision of this Court in Shrimati Indermani Jatia v. Commissioner of Income-tax, U. P., Lucknow. The question in that case was whether the amount spent in connection with a criminal litigation could be said to be expenditure laid out or expended wholly and exclusively for the purpose of such business. The Tribunal had recorded a finding that the expenses were not incidental to the business and we pointed out that "the assessee, in order to claim this deduction as expenditure, had not only to prove that the expense was incidental to the business but to show that the expenses were laid out or expended wholly and exclusively for the purposes of the business."

In In re Gabdulal Tulsiram, where a sum of money was paid to the Central Government to compound an offence, we held that -

> "It was not necessary for the assessee for purposes of his trade or business to declare the value of his goods at a figure far below their proper value. He did it not for the purpose of his business but for the purpose of making dishonest gain and when he compounded the matter with the Central Government, he did so to escape criminal prosecution."

We, therefore, held that the amount could not be said to have been spent wholly and exclusively for the purposes of the business.

In Commissioner of Income-tax, West Bengal v. H. Hirjee the Supreme Court, considering the question whether money spent in certain criminal proceedings could be said to be an expenditure laid out or expended wholly and exclusively for the purpose of the business, said -

> "The deductibility of such expenses under section 10(2) (xv) must depend on the nature and purpose of the legal proceeding in relation to the business whose profits are under computation, and cannot be affected by the final outcome of that proceeding....." and also -
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> "If, as the High Court realised, in every criminal prosecution where the matter is defended to protect the good name of a business or a professional man, the fear of possible fine or imprisonment must always be there, it must ordinarily be difficult for any court to say that the expenses incurred for the defence, even if they are not to be regarded as the personal expenses of the person accused, constituted expenditure laid out or expended wholly and exclusively for the purposes of the business. Learned counsel for the respondent frankly admitted that he was not able to find a single case in the books where the expenses incurred by a person exercising a trade or profession in defending a criminal prosecution, which arises out of his business or professional activities, were allowed to be deducted in the assessment of his profits or gains for income-tax purposes."

In a recent important decision of the House of Lords in Morgan (Inspector of Taxes) v. Tate & Lyle Ltd. 2 the question arose whether the money spent to prevent nationalisation of the business and the seizure of the assets of the company could be said to have been spent wholly and exclusively for the purposes of the companys trade. Though the decision is not relevant for our purposes yet it contains an exhaustive examination of the case-law as to when money spent not for the purpose of increasing the profits but for other purposes connected with the trade can be said to be money spent for purposes of the business.

In the course of his opinion Lord Reid said :

> "A general test is whether the money was spent by the person assessed in his capacity of trader or in some other capacity - whether on the one hand the expenditure was really incidental to the trade itself or on the other hand it was mainly incidental to some other vocation or was made by the trader in some other capacity than that of trader."

The difference of opinion that arose in that case between the majority opinion and the minority view turned on the decision of the question whether expenditure designed to retain the ownership and control of a business was expenditure laid out for the purposes of the trade, but on the principles laid down in that case it cannot be doubted that money spent by one partner no enforce his rights against another partner could not be said to be money laid out or expended wholly and exclusively for the purpose of the business as it was not an expenditure incidental to the business, nor was the money laid out to increase the profits of the business, or secure its property either directly or indirectly.

The answer to the second question, therefore, must be in the negative.

Coming now to the questions (a) and (b), from the facts stated by the Tribunal it is now clear that the five mortgage loans amounting to Rs. 3,66,606 were kept joint, the share of Radhey Lal and Ram Sarup being half each. No fresh loans were advanced and they agreed that on the realisation of the amount it would be divided half and half. During the relevant chargeable accounting period the amount received from Pyare Lal Anandilal was Rs. 1,34,000 against the original debt of Rs. 1,02,725. The amount received in excess was, therefore, Rs. 31,275 in which the assessees share was half, i.e., Rs. 15,612. The question was whether this was income from business. The Tribunal took the view that there could be no doubt that Makkan Lal was carrying on money-lending business in the course of which he had lent money on mortgages and the nature of these loans would not change by reason of his death or by reason of the fact that his sons did not enter into any fresh loan transaction.

It may be that Makkan Lal was carrying on money-lending business and in the course of the money-lending business he had lent five sums of money which were outstanding on the five mortgages but on his death the amount was inherited by the sons and, since they did not carry on any money-lending business, from the mere fact that they had to realise the outstanding debts and divide the amount realised half and half between them it cannot be said that they were carrying on money-lending business. The question is not whether the nature of the debt can change. The question for decision is whether the sons were carrying on money-lending business and whether the amount, which they realised from Pyarelal Anandilal in excess of the amount originally lent, was taxable income in their hands.

Income, profits and gains have been divided under section 6 into various heads; salaries, interest on securities, income from property, profits and gains of business, profession or vocation from other sources. A sixth head capital gains has also now been added under section 6, but we are not concerned with that head, as it was added by an amendment in 1947. To our minds, the mortgage debts inherited by the assessee, who did not carry on money-lending business, became his capital and any interest that accrued due or was realised during the chargeable accounting period over and above the amount inherited was income from other sources.

In Bennett v. Ogston (H. M. Inspector of Taxes) a money-lender had made loans on promissory notes which provided for payment to him of certain instalments. Installments falling due after his death were collected by the administrator of his estate but the administrator was not at any time carrying on any trade. It was held by Rowlatt, J., that :

> "When a trader or a follower of a profession or vocation dies or goes out of business..... and there remain to be collected sums owing for goods supplied during the existence of the business or for services rendered by the professional man during the course of his life or his business, there is no question of assessing those receipts to income-tax; they are the receipts of the business while it lasted, they are arrears of that business, they represent money which was earned during the life of the business and are taken to be covered by the assessment made during the life of the business.... But this is not that case; because here the interest in question is not the accrued earnings of the capital during the life of the deceased or the time the business was

> carried on; it is the earnings of the capital or so much as is left of it since the death, and this interest has been earned over the time which has elapsed since the death."

It was on this interest that the learned Judge held that income-tax was payable.

The question (a) has been very badly framed, though we had asked the Tribunal to reframe it. We reframe the question to bring out the point that was urged before us and as reframed the question should read as follows :-

> "On the finding that Ram Sarup and Radhey Lal inherited five mortgage debts in favour of their father Makkan Lal but advanced no fresh loans and merely took steps to recover the outstanding debts and agreed that on the amount being realised they would share it half and half could they be deemed to have carried on money-lending business ?"

In view of what we have said above, the question as reframed must be answered in the negative and it cannot be said that merely because the two brothers were to realise the debts due that they were carrying on money-lending business.

The answer to question (b) must be that the amount due on the death of Makkhan Lal was capital in the hands of his sons and only the income which accrued due or was received after his death can be treated as taxable income.

The assessee is entitled to his costs which we assessee at Rs. 500.

BHARGAVA, J. - While I have agreed with and signed the judgment delivered by My Lord the Chief Justice on behalf of both of us, I would like to add a few words in support of the view taken by us. The language of sub-section (1) of section 10 shows that this section lays down in respect of which profits and gains income-tax is payable by an assessee under the head profits or gains of business, profession or vocation. The computation of profits or gains under sub-section (2) of section 10 is confined to the profits or gains which fall within sub-section (1) of that section by the use of the word "such". The language of sub-section (1) indicates that it is a general provision making the tax payable in respect of the profits or gains of "any" business, profession or vocation carried on by the assessee. The language of sub-section (2) of section 14 is similar to that of sub-section (1) of section 10 but lays down the contrary rule prescribing the profits or gains in respect of which the tax shall not be payable by an assessee. Clauses (a), (b) and (c) of this sub-section mention three sources of income in respect of which the tax is not payable. This sub-section is, therefore, clearly a special provision which apparently conflicts with the general provision contained in sub-section (1) of section 10. Under sub-section (1) of section 10, the tax is made payable in respect of profits or gains of "any" business, profession or vocation carried on by the assessee which would include income, profits or gains accruing or arising to him even within a Part B State, but the latter is not liable to be taxed under clause (c) of sub-section (2) of section 14. Clause (c) of sub-section (2) of section 14 is, therefore, a special provision in respect of the same income, profits or gains which are also covered by the general provision in sub-section (1) of section 10. In such a case, the principle of generalia

specialibus non derogant becomes applicable. Where there are two provisions in an Act, one of which is specific or of a special character and the other of a general character, the specific or special provision qualifies the general one and ought to be applied in preference to and unaffected by the general one. In other words, where a special provision deals with a particular thing or class of things, a more general provision, even though its terms would cover the particular thing or class of things, is excluded from application thereto by reason of the particular provision. This is a well known principle that has been recognised by all the courts over a long period. The application of this principle to the case before us necessarily leads to the conclusion that when income, profits or gains of a business have to be computed in order to determine whether the tax is payable in respect of it, the computation under section 10 must be made after applying the special provision laid down in clause (c) of sub-section (1) of section 14 and, consequently, whenever income is computed under sub-section (2) of section 10, the income, profits or gains covered by clause (c) of sub-section (2) of section 14 cannot be taken into account. If the income, profits or gains cannot be taken into account, so also the losses must also be disregarded. It is only when under section 16 the total income of an assessee has to be computed that the income, profits or gains mentioned in sub-section (2) of section 14 have to be included because of the specific provision to that effect in clause (a) of sub-section (1) of section 16 and, a fortiori, the losses in respect of the business referred to in clause (c) of sub-section (1) of section 14 must also be deducted. This inclusion or deduction affects the calculation of the tax under section 17 which, in effect, merely determines the rate of tax payable on the income, in respect of which the tax is payable under sub-section (1) of section 10, as qualified by clause (c) of sub-section (2) of section 14. Hence our view expressed by My Lord the Chief Justice that, in this case, there is no reason why the Income-tax Officer should, in making a computation for tax purposes, take into account losses incurred at Jaipur though it would be fair that, when the profits have to be taken into account for tax purposes, the losses in an Indian State should also be taken into account for those Reference answered accordingly.