The Commissioner Of Income-Tax, Madhya ... vs Seth Khushal Chand Daga on 7 March, 1961

Equivalent citations: 1961 AIR 1259, 1962 SCR (1) 186, AIR 1961 SUPREME COURT 1259

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.L. Kapur, J.C. Shah

PETITIONER:
THE COMMISSIONER OF INCOME-TAX, MADHYA PRADESH

Vs.

RESPONDENT:
SETH KHUSHAL CHAND DAGA

DATE OF JUDGMENT:
07/03/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
KAPUR, J.L.
SHAH, J.C.

CITATION:
1961 AIR 1259 1962 SCR (1) 186
CITATOR INFO :
RF 1975 SC1282 (10)

ACT:
Income Tax-Set-off of loss-Amount computed not notified in writing-Effect-Income-tax Act, 1922 (XI of 1922), SS. 24, 24(3).

HEADNOTE:
For the accounting year 1941 the assessee's profits from his share in an unregistered firm were,. set off against his losses in the individual business and the Income Tax Officer determined the loss to be carried forward at RS. 53,840, but did not notify to the assessee by order in writing the amount of the loss as computed by him as required by S. 24(3) of the Act. The assessee appealed against the

assessment but did not question the amount of the loss which had been determined. In the year 1942-43 the assessee claimed to reopen the question of the loss to be carried forward stating that it was RS. 2,116760. This contention was rejected by the Tribunal. The contention was again raised by the assessee in the assessment years 1948-49 and 1949-50.

The question was whether the loss which had been determined and ordered to be carried forward must be deemed to have become final because no appeal was filed against that determination.

Held, that computation of the amount of loss under S. 24 Of the Income-tax Act does not become final unless the Income-tax Officer notifies by order in writing, the amount of the loss as computed by him to the assessee. The assessee was entitled to have

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the loss redetermined in a subsequent year though he had not filed an appeal against the determination of the loss but no appeal could be filed in the absence of an order in writing. Seth jamnadas Daga v. The Commissioner of Income-tax, [1961] 3 S.C.R. 174, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 148 to 150 of 1960.

Appeals by special leave from the judgment and order dated October 31, 1956, of the former Nagpur High Court in Misc. Civil Case No. 184 of 1953.

K. N. Rajagopala Sastri and D. Gupta, for the appellants. J. M. Phakar, S. N. Andley, J. B. Dadachanji and Bameshwar Nath, for the respondents.

1961. March 7. The Judgment of the Court was delivered by HIDAYATULLAH, J.-These appeals, by special leave, have been filed by the Commissioner of Income-tax, Madhya Pradesh, against the assessee, an individual, by name Seth Khushal Chand Daga. The assessee was a partner in a firm, Messrs. R. B. Bansilal Abirchand of Nagpur. In the year of account ending Diwali, 1941, he received his share of assets and property from this firm, and started business of his own. In the same year, his sources of income were speculation, allowance from Government as treasurer, house property and dividends. The assessee had received some profits from his share in an unregistered firm against which were set off his losses in his individual business, and the Income-tax Officer, who made the assessment, determined the loss to be carried forward, at Rs. 53,840. The assessee appealed against the assessment, but did not question the loss which had been determined.

For the year, 1942-43, the assessee claimed to reopen the question of the loss to be carried forward, stating that it was Rs. 2,11,760. This contention was not accepted by the Department, and on appeal, by the Tribunal. The contention was, however, raised again by him in the assessments for the years,

194849 and 1949-50. In these years, he had profits from his share in the unregistered firm, Rs. 1,82,773 and Rs. 1,39,922 respectively, against which were set off his losses in his individual business, Rs. 1,18,913 and Rs. 60,589 respectively. The contention of the assessee was that the profits which he had derived. from the unregistered firm could not be set off against the loss in his individual business, as the profits of the unregistered firm had borne tax not in his hands but in those of the firm. This contention was rejected by the Department; but on appeal to the Tribunal, it was accepted. On the Tribunal being moved to make a reference, it referred four questions. Two of those questions dealt with matters also arising out of these assessments, but they have not been mentioned by us in this judgment. The two questions pertaining to these appeals were:

> "(1) Whether the assessee was competent in law to raise a question with regard to the determination of loss for the assessment year 1941-42 as finally determined in appeal, in the course of proceedings for the assessment year- 1942-43 when the loss brought forward from 1941-42 was being set off ?
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> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the loss suffered by the assessee from his personal business (including his share of ..loss from another firm) cannot be set off under Section 24(1) against his taxed share income from an unregistered firm?"

These questions were answered by the High Court against the Commissioner, who has now appealed, with special leave. It was conceded by the learned counsel for the Commissioner that the second question has now been decided by this Court in Seth Jamnadas Daga v. The Commissioner of Income Tax (1), and that the answer must be against the Department. That portion of the case was thus not argued.

As regards the first question, the only contention raised was that the loss which had been determined and ordered to be carried forward must be deemed to (1) [1961] 3 S.C.R. 174.

have become final, because no appeal was filed against that determination. But it appears that the procedure laid down by a. 24(3) under which the Income- tax Officer has to notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of that section was not followed. No doubt, under s. 30 an appeal lies, if the assessee objects to the amount of loss computed and notified under s. 24; but inasmuch as the Income-tax Officer had not notified the loss computed by him by order in writing, an appeal could not be taken on that point. In our opinion, the assessee was, therefore, entitled to have the loss re- determined in a subsequent year. Learned counsel for the Commissioner stated that the Department was not very anxious for the decision, because this particular assessee has had only losses in the years following, and no loss would be occasioned to the Revenue, if the losses brought forward be redetermined. But that is a matter, with which we are not concerned. In our opinion, the judgment of the High Court impugned before us was correct in the circumstances of the case.

The appeals fail, and are dismissed with costs. One hearing fee.

Appeals dismissed.