Commissioner Of Income-Tax vs P.M. Muthuraman Chettiar And Anr. on 16 January, 1962

Equivalent citations: AIR1967SC415, [1962]44ITR710(SC)

Author: S.K. Das

Bench: J.C. Shah, M. Hidayatullah, S.K. Das

JUDGMENT

S.K. Das, J.

1. These two consolidated appeals raise a common question of law and have been heard together. The Commissioner of Income-tax, Madras, is the appellant in both the appeals. P.M. Muthuraman Chettiar, manager of a Hindu undivided family, is the respondent in Civil Appeal No. 429 of 1960 and S. Abdul Shakoor is the respondent in Civil Appeal No. 430 of 1960. We shall refer to the respondent in each of these two appeals as the assessee.

2. The short facts giving rise to the two appeals are these. The assessee in Civil Appeal No. 429 of 1960 is a Hindu undivided family consisting of a father and his minor son. The assessee carried on business as a money lender and a dealer in shares win what was then known as British India. The assessee was also a partner in three non-resident firms carrying on notification at Penang, Kuantan and Raub. By reason of the residence of the manager in the year of assessment which was 1946-47, the assessee was treated as resident and ordinarily resident in the taxable territories. In the course of the assessment proceedings, the assessee claimed that it had incurred a loss of Rs. 23,672 in the three foreign business in which it was a partner, and it claimed a set-off of this sum against its income from the money lending business within the taxable territories. The income-tax authorities negatived the claim and this order was confirmed by the Appellate Assistant Commissioner and by the Tribunal. The reasoning on which the claim was disallowed by the Tribunal was this the Tribunal said that when an assessee carried on more business than one and sustained loss in one of them, the same could be set off against the income from other business under S. 10 of the Indian Income-tax Act, 1922, but that principle was not applicable where the business carried on by the assessee was in partnership with others. The Tribunal expressed the view that in such a case S. 10 of the Indian Income-tax Act would not apply and the right to set off would arise only under S. 24 and as none of the subsections of that section were attracted to the case, the assessee was not entitled to the relief claimed.

3. In compliance with the requisition of the High Court of Madras under section 66 (2) of the Income-tax Act, the Tribunal stated a case in respect of the following question of law which arose out of its order :

> "Whether the loss of Rs. 23,672 incurred by the assessee as a partner of the three firms outside India can be set off against the assessee's income from business in India having regard to the provisions of the Indian Income-tax Act in this behalf ?"

This question was answered by the High Court in favour of the assessee.

4. In Civil Appeal No. 430 of 1960 the assessee, who was resident and ordinarily resident in the taxable territories, carried on a business in the manufacture and sale of "lungies" at Madras. In or about April, 1946, a similar business was started at Rangoon in Burma in which the assessee became a partner along with two other persons, the assessee's share being 9/16 only. The assessee was the capitalist partner, while the other two were working partners in-charge of the management of the business. The Rangoon firm suffered a loss and as no accounts were said to have been maintained, a statement of affairs as on December 31, 1946, of the Rangoon firm was taken and this should a loss of Rs. 43,969. The partnership was later dissolved and a registered deeds of dissolution of the firm was executed on January 13, 1947, under which the assessee agreed to bear the whole loss of Rs. 43,969 as the other partners where unable to contribute their share of the loss and also to take over the assets and liabilities of the Rangoon firm as on December 31, 1946. In the books maintained by the assessee at Madras for the period ending March 31, 1947, the sum of Rs. 43,969 was adjusted to the capital account of the assessee and in the return of the total income filed for the assessment year 1947-48, the assessee claimed that the loss of Rs. 43,969 from the Rangoon firm should be allowed as a set off. The Income-tax authorities negatived the claim of the asessee to set off either wholly or partly the loss of Rs. 43,969. On appeal to the Tribunal it held that the Rangoon firm was a different entity from the assessee and, therefor, he was not entitled to any set off of the loss incurred by the Rangoon firm and dismissed the appeal. A case was then stated under S. 66(2) of the Income-tax Act to the High Court on the following question of law, namely :

> "Whether on the facts and circumstances of the case the share of the assessee's loss out of the sum of Rs. 43,969 cannot be set off against the profits of the assessee's business in arriving at the total assessable income ?"

The High Court answered the question in favour of the assessee.

5. The only point for decision in the two appeals is whether the High Court has correctly answered the two questions.

6. It appears that in the High Court the point urged on behalf of the present appellant was that there was no identity between the unit which derived the income and the units which sustained the loss and on this ground it was urged that there could be no set off under section 10 which permitted the loss incurred by the same unit being set of against the profit derived by it; in the other words, the argument was that under income-tax law when an individual or the karta of a Hindu undivided family was a partner in a firm the unit of assessment in regard to the firm's profits or gains was the firm itself which was an entity separate and distinct from the partners composing it, notwithstanding that for the purpose of computing the total income of an individual, his share of the profits from the firm has to be included in his total income. The High Court repelled this argument

and, in our opinion, rightly repelled it in the circumstances of these two cases. A similar argument was considered and repelled by the Privy Council in Arunachalam Chettiar v. Commissioner of Income-tax, Madras, . It was observed therein that whether a firm was registered or unregistered, a partner's share of the loss in the firm could be set off against the profits and gains made by him in his individual business. That principle applies in the present cases, even though after the amendment of the Income-tax Act in 1939, the position of a partner in an unregistered firm may stand on a different footing, a distinction which is not material for the present cases.

7. The learned advocate for the appellant has not supported the case sought to be made out by the Revenue in the High Court. He has, however, relied on the second proviso to section 24 (1) of the Income- tax Act. It seems clear to us that that proviso has no application to the facts of the cases under our consideration. In Commissioner of Income-tax v. Indo-Mercantile Bank Ltd., this court pointed out that the object of section 24 (1) of the Indian Income-tax Act was allow the set-off of loss of profits or gains under one head against income, profits or gains under any other head, land there was nothing in the section or in the first proviso thereto which would favour the disintegration of the head "business"; it further pointed out that section 10 of the Indian Income-tax Act did not distinguish between business in British Indian and business in an Indian State or so divide business. The ration of that decision must apply to the cases under our consideration and the assessees are entitled to set off losses which the assesses are entitled to set off losses which they had suffered in business outside the taxable territories against profits and gains made from business within the taxable territories. It is worthy of note that though the profits of each distinct business may have to be computed separately, the tax is chargeable under S.10, not on the separate income of every distinct business, but on the aggregate of the profits of all the business carried on by the assessee. It follows from this that where the assessee carries on several businesses, he is entitled under S.24 (1), to set off losses in one business against profits in another. If as we hold that S. 24(1) has no application to the facts of the present cases, the second proviso thereto can also have no application. Moreover, the second proviso to S. 24(1) applies only where the case is an unregistered firm. That is not the case here. The assesses before us arc, in one case, a Hindu undivided family and, in the other, an individual. It is obvious therefore, that the second proviso to S.24 (1) can have no application in these cases.

8. It is thus clear that the High Court correctly answered the two questions referred to it, and the appeals are really concluded by the ratio of the decision in Commissioner of Income-tax v. Indo-Mercantile Bank Ltd. The appeals are accordingly dismissed with costs; one hearing fee.

9. Appeals dismissed.