Hoogly Trust (Private) Ltd vs Commissioner Of Income-Tax, West ... on 4 February, 1969

Equivalent citations: 1969 AIR 946, 1969 SCR (2) 557, AIR 1969 SUPREME COURT 946

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:
HOOGLY TRUST (PRIVATE) LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, WEST BENGAL ANDANDAMAN AND NICOB

DATE OF JUDGMENT:
04/02/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1969 AIR 946 1969 SCR (2) 557
1969 SCC (1) 535
CITATOR INFO :
RF 1978 SC1320 (12)
R 1986 SC1483 (4)

ACT:
Income-tax Act (11 of 1922), s. 24(2) (before its amendment by the Finance Act of 1955)-Business in several commodities-Loss in one-Set off claimed against profits in others-Question of fact-When High Court can examine its correctness.

HEADNOTE:
The assessee carried on business in several commodities including cloth. In the assessment years 1953-54 and 1954-55 the assessee suffered loss in cloth business, and it was

determined for the purposes of s. 24(2) of the Income-tax Act, 1922 (as it stood before the amendment in 1955). During the subsequent three assessment years, the Income-tax Officer refused to allow the carry forward of these losses and their set off against the business profits of those years on the ground that the losses determined in the preceding years arose out of the cloth business which was different from the other business carried on by 'the He held that since the cloth business was not carried on during the relevant year of account the loss therefrom in preceding years could not be carried ,forward and set off against profits of other business. The Appellate Assistant Commissioner agreed with the Income-tax Officer. Me Tribunal found (i) that the assessees dealings in cloth started very early and the introduction of control only changed the procedure of carrying on the business, (ii) that the assessee has been doing business in several commodities and its trading in each commodity did not constitute separate business, (iii) that the cloth business never assumed the proportion or the stature of a distinct and separate business and (iv) that there was evidence to show dovetailing of cloth business into the general section. The question, as to whether on the facts and in the circumstances of the case, the cloth business and the business in the general section constituted the same business within the meaning of s. 24(2) as it stood then, was referred to the High Court. Relying on most of the facts determined by the Appellate Assistant Cormmissioner, the High Court answered the question against the assessee. In appeal, to this Court, the assessee contended that (i) the findings on questions of fact given by the Tribunal were final and it was not open to the High Court to examine their correctness in the absence of any proper question on the point; and (ii) on the findings of the Tribunal the losses on account of cloth business were liable in law to be carried forward and set off against the profits during the relevant assessment years.

HELD : The question must be answered in the affirmative and in favour of the assessee.

(i)In spite of the form in which the question had been referred it was not open to the High Court to examine the correctness of the conclusions of the Tribunal on-facts. If the Tribunal does not consider the evidence covering all the matters and bases its findings upon some evidence only ignoring other essential material that would amount to a misdirection in law and the findings would give rise to a question liable to be referred to the High Court. But it is equally well settled that if the question about the validity of the findings of fact-is sought to be raised for one reason or

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another, reference of a proper question challenging those findings must first be sought before those findings can be

challenged before the High Court. No attempt was made before the Tribunal to have any such question referred and in the absence of a proper question it was not open to the High Court to accept the findings of the A appellate Assistant Commissioner in preference to those given by the Tribunal or to come to any independent conclusion itself on the faces. The Tribunal does not appear to have discussed the entire evidence on which the findings were based but the order of the Appellate Assistant Commissioner and his findings as also the entire record were before it and there is nothing to suggest that all the material facts were not present to its mind except that they are not mentioned in detail. Its findings, therefore, must be accepted as final and the only question which it was open to the High Court to examine was whether the cloth business could be regarded as the same business within the meaning of s. 24(2) of the Act. [563 B-D; 563 G]

India Cement Ltd. v. Commissioner at Income-Tax, Madras, 60 I.T.R. 52, 64 and Hazarat Pir Mahomed Shah Saheb Roza Committee v. Commissioner of Income-tax, Gujarat, 63 I.T.R. 490, 496, referred to.

(ii)The question whether on the application of the settled tests different ventures carried on by the assessee from the same business for the purpose of s. 24(2) is a mixed question of law and fact. The fair test is whether there was any inter-connection, any inter-lacing, any inter-dependence, any unity were found to exist by virtue of the common management, common business Organisation, common administration, common fund and common place of business. [564 D-E]

Setabganj Sugar Mills Ltd. V. Commissioner of Income-tax, Central, Calcutta, 41 I.T.R. 272, 274, Scales v. George Thompson & Co. Ltd., [1927] 13 T.C. 83; Manilal Dahyabhai v. Commissioner of Income-tax, Bombay City, 37 I.T.R. 398 and Commissioner of Income-tax, Madras v. Prithvi Insurance Co. Ltd. 63 I.T.R. 632, 637, referred to.

Applying these principles the conclusions which the Tribunal arrived at were correct.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 1659 to 1661 of 1968.

Appeals from the Judgment and order dated March 26, 1965 of the Calcutta High Court in Income-tax Reference No. 130 of 1961.

Sukumar Mitra and D. N. Mukherjee, for the appellant (in all the appeals).

S.T. Desai, S. K. Aiyar, R. H. Dhebar and B. D. Sharma, for the respondent (in all the appeals).

The Judgment of the Court was delivered by Grover, J. These three appeals are by certificate from a common judgment of the Calcutta High Court answering the following question referred to it by the Income Tax Appellate Tribunal in the negative and against the assessee "Whether on the facts and in the circumstances of the case, the cloth business of the assessee and its business in the General Section constituted the same business within. the meaning of s. 24(2) of the Indian Income-tax Act as it stood at the material time."

According to the statement of the case the assessee is a private limited company owning shares and securities and also doing business. The relevant assessment years are 1955-56, 1956-57, 195758, the corresponding accounting years being the calendar years 1954, 1955 and 1596. In the assessment for the years 1953-54 and 1954-55 losses amounting to Rs. 2,13,898 and Rs. 46,050 respectively were determined for the purposes of s. 24(2) of the Income tax Act 1922, hereafter called the "Act". In the first year a loss of Rs. 2,08,686/- arose in cloth business whereas the balance of the loss occurred in the General section and the manure section. In the second year a loss of Rs. 46,050 occurred mainly in cloth business. During the three assessment years in question the Income tax Officer refused to allow the carry forward of these losses and their set off against the business profits of those years on the ground that the losses determined in the preceding years arose out of the cloth business which was different from the other business carried on by the assessee and since the cloth business was not carried on during the relevant year of account the loss therefrom in preceding years could not be carried forward and set off against profits of the other business. The Appellate Assistant Commissioner agreed with the conclusion of the Income tax Officer. He rejected the contention of the asessee that common ownership, common direction and control, common financial arrangement, common staff and common balance sheet necessarily established that the business was single. He took the view that the character of the cloth business carried on by the assessee was entirely different from the other business. He laid particular emphasis on the fact that the assessee acted as a distributing agent on behalf of the Government for cloth and cement and the mode of carrying on of that business was altogether different from that of its ordinary business. He referred to the fact that the cloth business had a separate overdraft account with the Bank with which stocks of cloth had been pledged and there was separate staff for the cloth business even though the assessee claimed that a part of the staff in the General section also looked after the cloth business. The assessee contended before the Tribunal in appeal that till the end of 1945 its business was confined only to shares and the management of zamindari properties and that dealing in cloth began only in 1946 and in 1950 the assessee was dealing in manure and in 1952, in paints as well. After the introduction of control on cloth in 1948 the company was appointed as a nominated buyer approved by the Government doing business at it.,; own risk under conditions prescribed by the Government by whom prices at which the goods were to be sold were fixed. Certain expenses relating to the cloth business like motor car and godown expenses were charged to the General account, whereas certain expenses relating to the General section like rent and telephone charges were charged to the cloth account while audit fees were allocated to a different department. The control over the different activities of the assessee was not exercised by the Director but by common managerial staff and there was sufficient financial inter-relation between the cloth business and the General section. The Tribunal held that the assessee's dealings in cloth started as early as 1946 and that the introduction of control by the Government changed the procedure of carrying on the business. It was further found that the assessee had been doing business in several commodities one after the other or along

with the other and apart from the fact that a separate profit and trading account was maintained for cloth business there was nothing to suggest that the cloth business assumed the proportion or the stature- of a distinct and separate business. It was accordingly held that the transactions in cloth were part and parcel of a single business carried on by the assessee and the loss therefrom could not be segregated as a loss from a distinct business for the purpose of s. 24(2) of the Act.

The High Court referred to certain other facts as found by the Appellate Assistant Commissioner. It had been found by him that the assessee was mainly doing banking business from 1942 to 1948 although it had, during that period, income from other ,sources. In the year 1948 it started acting as the distributing agent of cloth on behalf of the Government. That business continued till the year 1952 when control on cloth was lifted. 'Me assessee disposed of in retail stocks left over during the first few months of the year 1953. Thereafter the assessee ceased to have any dealings in cloth. The High Court quoted extensively from the order of the Appellate Assistant Commissioner. It felt that the Tribunal had not dealt with the matter in a satisfactory way. Reference was made to its own decision in another case in which it had been held by the High Court that in order to find out whether the business of an assessee was the same in two different years the primary consideration was the nature of the business and the way it was conducted. Merely because the assessee's business was one of a dealer in several kinds of commodities it could not be said that it has only one business for the purpose of s. 24(2) when a part of its activities had come to an end. Relying on most of the facts determined by the Appellate Assistant Commissioner the High Court found difficulty in agreeing with the view on the Tribunal that there was any dovetailing of the cloth business into the General section. This is what the High Court said finally:

> "In our opinion, (i) that the inference drawn by the appellate tribunal was not warranted by the facts on record and (2) that the cloth business was separate from the assessors business in general section notwithstanding that there was some interconnection of expenses or control."

In order to decide the points raised before, us it is necessary first to refer to the relevant provisions of the Act. Section 6 gives six heads of income profits and gains which shall be chargeable to income tax. Out of these the fourth head is "profits and gains of business, profession or vocation". Section 10 taxes the profits of business, profession or vocation carried on by the assessee. Section 24(1) provides that where any assessee sustains a loss of profits or gains for any year under any of the heads mentioned in s.' 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. It is unnecessary to refer to the proviso and the Explanations). Prior to its amendment by the Finance Act 1955, sub-s. (2) of s. 24 ran as follows :-

> "(2) Where any assessee sustains a loss of profits or gains in any year,. being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-section, (1), so much of the loss as is not so set off or the whole loss where the assessee had no other head of income shall be carried forward to the following year and set off against the profits and gains, if any,

of the assessee from the same business, profession or vocation of that year.....

Sub-s. (2) of s. 24 was substituted by s. 16 of the Finance Act of 1955 the material portion for our purposes being:

> "(2) Where any assessee sustains a loss of profits or, gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set off under sub-s. (1), so much of the loss as is not set off or the whole loss' where the assessee had no other head of income shall be carried forward to the following year, and
>
> (i).....
>
> (ii)where the loss was sustained by him in any other business, profession or vocation, it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year;

provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year; and

(iii).....

The argument before us has proceeded on the footing that the matter has to be decided under sub-s. (2) as it stood before its amendment in 1955. The principle contentions on behalf of the appellant-assessee are two-fold. It is urged firstly that the findings Ion questions of fact given by the Tribunal were final and it was not open to the High Court to examine their correctness in the absence of any proper question on the point. Secondly, on the findings of the Tribunal the losses on account of cloth business were liable in law to be carried forward and set off against the profits during the relevant assessment years. On the other hand counsel for the respondent maintains that it was open to the High Court to prefer the findings of the Appellate Assistant Commissioner to those of the Tribunal because the Tribunal had based its conclusions on a misreading of evidence and ,on a consideration of irrelevant evidence. Counsel further says that the Tribunal's decision was hardly.a decision in the eye of law and that it had been rightly held by the High Court that the cloth business did not fall within the meaning of the expression "'the same business" in s. 24(2) of the Act as it stood before the amendment of 1955. It has been held by this Court in Setabganj Sugar Mills Ltd. v. Commissioner of Income tax Central, Calcutta (1) that the question whether on the application of the settled tests different ventures carried on by the assessee form the same business for the purpose of s. 24(2) is a mixed question of law and fact. Reference was I made in this case to the princ iple stated by Rowlatt, J. in Scales v. George Thompson & Co, Ltd. (2) that the real question is whether there was any inter-connection, any interlacing, any inter- dependence, any unity at all embracing those two businesses. The following observations from the judgment of this ,court may be reproduced:

> "No doubt, findings of fact are involved because a variety of matters bearing, on the unity of the business have to be investigated, such as unity of control and management,, conduct of the business through the same agency, the inter-relation of the businesses, the employment of same capital, the maintenance of common books of account, employment of same staff to run the business, the nature of the different transactions, the possibility of one being closed without affecting the texture of the other and so forth. When, however, the true facts have been determined, the ultimate conclusion is a legal inference from proved facts, and it is one of mixed law (1) 41 I.T.R. 272,274.
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> (2)[1927]13 T.C. 83.

and fact, on which depends the application of S. 24(2) of the Act.....

It is not possible to accept the submission made on behalf of the respondent that in spite of the form in which the question had been referred it was open to the High Court to examine the correctness of the conclusions of the Tribunal on facts. There can be no dispute that if the Tribunal does not consider the evidence covering all the matters and bases its finding___ upon some evidence only ignoring other essential material that would amount to a misdirection in law and the findings would give rise to a question liable to be referred to the High Court. But it is equally well set- tled that if it is sought to raise the question about the validity of the findings on fact for one reason or another, reference of a proper question challenging those findings must first be sought before those findings can be challenged before the High Court : See India Cement Ltd. v. Commissioner of Income tax, Madras(.') and Hazarat Pir Mahomed Shah Saheb Roza Committee v. Commissioner of Income tax, Gujarat (2) . No attempt was made before the Tribunal to have any such question referred and in the absence of a proper question it was not open to the High Court to accept the findings of the Appellate Assistant Commissioner in preference to those given by the Tribunal or to come to any independent conclusion itself on facts.

The Tribunal gave the following findings: (1) The appellant's dealings in cloth started as early as 1946 and the introduction of control only changed the procedure of carrying on the business in the sense that the appellant became the nominated buyer approved by the Government. (2) The appellant had been doing business in several commodities one after the other or along with the other and its trading in each commodity did not constitute separate business. (3) The cloth business never assumed the proportion or the stature of a distinct and separate business. (4) There was sufficient evidence to show dovetailing of the cloth section into the General section. The conclusion of the Tribunal on these findings was that the transactions in cloth were part and parcel of a single business carried on by the appellant and did not constitute a distinct business for the purpose of s. 24(2), The Tribunal does not appear to have discussed the entire evidence on which the findings were based but the order of the Appellate Assistant Commissioner and his findings as also the entire record were before it and there is nothing to suggest that all the material facts were not present to its mind except that they are not mentioned in detail. Its findings, therefore, must be accepted as final and the only question which it was open to the High Court to examine was whether the cloth business could, be regarded as the same business (1) 60 I.T.R. 52, 64.

(2) 63 I.T.R. 490,496.

within the meaning of s. 24(2) of the Act. A great deal of reliance has been placed on a decision of the Bombay High Court in Manilal Dahyabhai v. Commissioner of Income tax, Bombay City(1) There the claim that the businesses were the same, was sought to be substantiated on the ground that only one set of accounts was being maintained; that both the businesses were carried on in the, Same premises with the help of the same staff,, that the capital employed was the same, the receipts in respect of one of them being utilized for the purpose of the other and that the terms of overhead and other expenses were common. It was held that the afore- said factors did not necessarily lead to the inference that the businesses must be regarded as one and the same. It was observed that though not conclusive but an important test was whether one of the two businesses conducted by the assessee could be stopped without affecting the texture or framework of the other. However in Commissioner of Income- tax, Madras v. Prithvi Insurance Co. Ltd. (2) this Court said " we are unable to agree with counsel for the Commissionerthat the test, whether one of the businesses can be closed withoutaffecting the conduct of the other business, is a decisive test in determining whether the two constitute the same business within the meaning of s. 24(2)." In that very case the test laid down by Rowlatt, J.,, in Scales v. George Thompson & Co. ,,Ltd.,(") was accepted as a fair test and inter-connection, interlacing, inter-dependence and unity were found to exist by virtue of the common management, common business Organisation, common administration, common fund and common place of business. We have no manner of doubt that on applying these principles the conclusion at which the Tribunal arrived was correct and the question referred should have been answered in the affirmative and in favour of the assessee. The appeals are consequently allowed with costs throughout and the answer returned by the High Court is hereby discharged. One hearing fee.

Y.P. Appeals allowed.

(1)37 I.T.R. 398.
(2)63 I.T.R. 632,637.
(3)[1927] 13 T.C. 83
L8 Sup CI/69-2,500-13-3-70-GIPF.