(1970) 12 AHC CK 0009

Allahabad High Court

Case No: Income-tax Reference No. 354 of 1964

Commissioner of Income Tax		APPELLANT
	Vs	
B.R. Sons (P.) Ltd.		RESPONDENT

Date of Decision: Dec. 10, 1970

Acts Referred:

- Income Tax Act, 1922 - Section 24(2)

Citation: (1971) 82 ITR 89

Hon'ble Judges: V.G. Oak, C.J; H.N. Seth, J

Bench: Division Bench

Advocate: R.R. Misra, for the Appellant; B.L. Gupta and Ashok Gupta, for the Respondent

Final Decision: Disposed Of

Judgement

V.G. Oak, C.J.

The short question for consideration in this Income Tax reference is whether two activities of an assessee constitute one business or two businesses. B. R. Sons (P.) Ltd., Kanpur, is the assessee. The assessment years are 1950-51, 1951-52 and 1952-53.

2. The assessee is a limited company, which was incorporated in 1945. Next year it acquired the managing agency of Meyer Mills Ltd. Under the terms of the agreement executed by the assessee for acquiring the managing agency, the assessee had to purchase the shares of the managed-company at an agreed price of Rs. 525 per share. For the assessment year 1947-48, the assessee claimed a huge loss of Rs. 21 lacs and odd due to the revaluing of the shares of the managed-company at Rs. 273-12-0 per share as against the purchase price of Rs. 525 per share. The loss was disallowed by the Income Tax Officer on the ground that it was capital loss. The same view was taken by the Income Tax Officer for the assessment years 1948-49 and 1949-50. When the assessee took up the matter in appeal, the Income Tax Officer conceded before the Appellate Assistant

Commissioner that the loss on revaluation of the shares of the Meyer Mills was partly allowable. When the Income Tax Officer took up the assessment for the assessment years 1950-51, 1951-52 and 1952-53, losses were worked out after deducting the dividend income which was treated as part of profits of the share dealing business. The assessee claimed set off for the unabsorbed losses relating to the assessment years 1947-48, 1948-49 and 1949-50. That claim was largely disallowed by the Income Tax Officer on the ground that the loss could not be carried forward u/s 24(2) of the Income Tax Act, 1922, because managing agency and dealing in shares constituted separate businesses. This view was upheld in appeal by the Appellate Assistant Commissioner.

3. But the assessee succeeded before the Appellate Tribunal. The Appellate Tribunal dealing with the assessment for the three years in question took the view that the two activities constituted one business.

4. At the instance of the Commissioner of Income Tax, U. P., the Appellate Tribunal, Allahabad, has referred the following question of Jaw to this court:

"Whether, on the facts and in the circumstances of the case, the business of managing agency of the Meyer Mills Ltd. and dealings in the shares of the said company constituted one and the same business?"

5. It will be noticed that the question before the court has arisen out of the assessee''s attempt to get adjustment for the unabsorbed losses of earlier years. In this connection, Dr. Misra appearing for the department contended that no question of adjustment arose, because the losses in question were capital losses and not revenue losses. This point was abandoned by the department before the Tribunal. Whether a certain loss is capital loss or revenue loss is a mixed question of fact and law. Since the point was abandoned before the Tribunal, the Commissioner cannot be permitted to raise the point at this stage that the loss of earlier years was capital loss. We would proceed on the assumption that the loss of earlier years was revenue loss.

6. In Setabgunj Sugar Mills Ltd. Vs. The Commissioner of Income Tax, Central, Calcutta, , it was explained by the Supreme Court that in order to determine whether different ventures can be said to constitute the same business, what one has to see is whether there was any interconnection, any interlacing, any interdependence, any unity embracing the ventures, whether the different ventures were so interlaced and so dovetailed into each other as to make them into the same business.

7. In Commissioner of Income Tax, Madras Vs. B.C. Munirathnam Naidu, , the assessee was engaged in film distribution. He was also the owner of a brick works, plied lorries for hire and transacted several other businesses. It was held by the Madras High Court that the various activities of the assessee were wholly disconnected, and no one venture could be said to be necessary for the carrying on

of another venture. The assessee was not entitled to set off the loss carried forward from his film distribution against the profits derived from his other activities.

8. In STANDARD REFINERY and DISTILLERY LTD Vs. COMMISSIONER OF Income Tax (CENTRAL), CALCUTTA., the assessee owned a distillery. It acquired a refinery in 1943. Later, it obtained on lease the sugar factory belonging to a sugar refining company and started manufacturing sugar. The Tribunal held that common ownership or common management of business or common staff and the same capital would not be true tests to find out whether they constitute the same business. What was required was interlacing, interdependence or dovetailing. It was held by the Calcutta High Court that the Tribunal had applied the correct tests.

9. In Manilal Dahyabhai Vs. Commissioner of Income Tax, Bombay City, , the assessee carried on business as a wholesale dealer in cloth. The assessee also carried on speculation in gold, silver and other commodities. The assessee claimed that the various activities constituted one business, and relied on the following six factors : (1) that only one set of accounts was maintained for receipts and withdrawals, (2) that both the businesses were carried on in the same premises; (3) that they were carried on with the help of the same staff; (4) that the capital employed for both the businesses was the same ; (5) that receipts in respect of one of them were utilised for the purpose of the other indiscriminately ; and (6) that the terms of overhead and other expenses were common. It was held by the Bombay High Court that these six factors relied upon by the assessee did not necessarily lead to the inference that the businesses must be regarded as one and the same business for the purpose of Section 24(2) of the Act.

10. In Commissioner of Income Tax, Madras Vs. Prithvi Insurance Co. Ltd., , it was held by the Supreme Court that if one business cannot conveniently be carried on after the closure of the other, there would be a strong indication that the two constituted the same business, but no decisive inference may be drawn from the fact that after the closure of one business, another may conveniently be carried on.

11. In Rekhabchand Sarogi and Others Vs. Commissioner of Income Tax, Bihar and Orissa , it was held by the Patna High Court that a registered firm by engaging in speculation did not enter into any different business. So, the assessee was entitled to carry forward the loss and set off against his share of profit from the registered firm in a subsequent year.

12. In Ramnarain Sons (Pvt.) Ltd. v. Commissioner of Income Tax [1961] 41 ITR 543: [1961] 3 S.C.R. 904 (S.C), the appellant-company was a dealer in shares, and also carried on business as managing agents of other companies. The appellant-company purchased from Sassoon David & Co. certain shares at a rate higher than the market rate. It was held by the Supreme Court that by purchasing the shares far in excess of their market price to facilitate the acquisition of the managing agency a capital asset was acquired by the appellant-company. The

intention in purchasing the shares was not to acquire them as part of the stock-in-trade of its business in shares. The loss incurred by the sale of shares was, therefore, loss of a capital nature.

13. It will be seen that in the case of Ramnarain Sons (Pr.) Ltd., the main question before the court was whether certain loss was of a capital nature or of a revenue nature. We have shown above that in the present case we have to proceed on the footing that the loss of earlier years was revenue loss. It has been found that the shares in question were stock-in-trade. Consequently, the decision of the Supreme Court in the case of Ramnarain Sons (Pr.) Ltd., is not of much assistance to the department.

14. In E. D. Sassoon & Co. Ltd. v. Commissioner of Income Tax, E.D. Sassoon and Co. Ltd. Vs. Commissioner of Income Tax, Bombay City I, , the firm, E. D. Sassoon & Co., , was doing business as bankers, commission agents, dealers in shares and securities and foreign exchange. In 1920 the assessee-company was incorporated to take over the business of the firm as a going concern, and the new company carried on the same business until 1948. It was held by the Bombay High Court that the assessee was entitled to set off loss suffered in dealing in shares against the total income from business.

15. In Produce Exchange Corporation Ltd. Vs. Commissioner of Income Tax (Central), Calcutta, , it was held by the Supreme Court that the decisive test was unity of control, and not the nature of the two lines of business.

16. In the present case the stand taken by the department and accepted by the Tribunal is that the shares were purchased in 1946 with a twin object. The first object was to secure the managing agency of Meyer Mills Ltd. The second object was trading purposes. The question before the court is whether the managing agency and dealing in these shares constitute one business or not. The Tribunal recognised the fact that the two activities could be conveniently carried on separately. It was possible to carry on managing agency after disposing of shares of the managed-company. Similarly, it was possible to hold the shares of Meyer Mills Ltd. after giving up its managing agency. This circumstance no doubt lends support to the department''s contention that the two activities constituted separate businesses.

17. On the other hand, there are several circumstances in favour of the assessee :

(1) One of the objects of acquiring the shares in question was to acquire the managing agency of Meyer Mills Ltd.

(2) The assessee maintained a single set of accounts for the two activities.

(3) Purchase of shares and acquisition of managing agency were simultaneous. The assessee had to purchase the shares of the managed company at an inflated price under the terms of the agreement, under which the assessee acquired the

managing agency.

(4) Ninety-five per cent. of the shares held by the assessee related to Meyer Mills Ltd.

(5) There was no allocation of interest between the managing agency and the shares of the managed-company.

(6) The shares were acquired and managing agency was obtained in the year 1946. After a few years the assessee started liquidating the shares. The assessee soon gave up the managing agency.

(7) The Tribunal has found that the company in fact combined the two activities under consideration.

18. It will be seen that the probabilities of the case are in favour of the assessee. The Tribunal was right in concluding that the two activities of the assessee under consideration constituted one business.

19. We, therefore, answer the question referred to the court in the affirmative and in favour of the assessee. The Commissioner of Income Tax, U.P., shall pay the assessee Rs. 200 as costs of this reference.