(1960) 01 MP CK 0030

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 251 of 1958

Commissioner of Income Tax		APPELLANT
	Vs	
Trilokchand Kalyanmal		RESPONDENT

Date of Decision: Jan. 22, 1960

Acts Referred:

- Income Tax Act, 1922 - Section 24(1), 24(2), 6

Citation: AIR 1960 MP 206 : (1960) ILR (MP) 182 : (1960) 39 ITR 131 : (1960) JLJ 553 : (1960) 5 MPLJ 539

Hon'ble Judges: P.V. Dixit, C.J; K.L. Pandey, J

Bench: Division Bench

Advocate: M. Adhikari, General, for the Appellant; A.P. Sen, for the Respondent

Judgement

Dixit, C.J.

This is a reference u/s 66 (1) of the Indian Income Tax Act at the instance of the Commissioner, Income Tax, made by the Appellate Tribunal, Bombay. It arises out of the assessment made on M/s. Trilokchand Kalyanmal of Indore, a Hindu undivided family, in respect of the assessment year 1950-51. The question referred to for our opinion is as follows:

"Whether on the facts and circumstances of the case the dividend income of Rs. 64,926/ arising from companies registered in Part B States is exempt from taxation under para 12 of the Part B States (Taxation Concessions) Order of 1950, in spite of the fact that the assessee had incurred business losses in Part B States?"

During the material period the assessee had business activities in Indore, Ujjain and Bombay, which included trading in commodities and conducting the business of the managing and selling agents of the Kalyanmal Mills Ltd., Indore. It derived income from various sources in Part A and Part B States and the income was taxable under the Indian Income Tax Act read with Part B States (Taxation Concessions) Order

1950. In the year of account, the business in Part A States resulted in a loss of Rs. 9156/ and there was also a loss in business in Part B States, amounting to Rs. 1,19,026.

The dividend income from the companies registered in Part A and Part B States was respectively Rs. 10,675 and Rs. 64,926. The income from other sources in part A and Part B States amounted to Rs. 81,233/. In determining the net income, which was found to be Rs. 28,54,652/- the Income Tax Officer set off the loss from business in Part B States against the dividend income from the companies registered in Part B States. The assessee''s claim that the loss could not be set off against the dividend income, which was exempt from tax under paragraph 12 of the Part B States (Taxation Concessions) Order 1950, was rejected by the Income Tax Officer.

The Appellate Assistant Commissioner upheld this set-off. The Tribunal differed from the view taken by the Income Tax Officer and the Appellate Assistant Commissioner, and came to the conclusion that the business loss in Part A and Part B States could not be set off against the divident income from the companies registered in Part B States as the dividend income was exempt from tax under paragraph 12 of the Order. The Tribunal, however, held that the dividend income had to be included in the total income.

Learned Advocate-General''s contention on behalf of the Commissioner is that the assessee''s total income would include the business income as also the dividend income; that paragraph 12 of the Order did not exempt from taxation dividends from companies registered in Part B States; that it merely said that

"no Income Tax shall be payable by the assessee on such proportion of the dividend as the non-taxable profits of the company arising in the State bear to the total income of the company";

that this meant that a certain proportion of the dividend did not attract tax and not that the dividend income was exempted from tax, or that such dividend income could, therefore, be excluded for the purpose of computing total income.

Learned Advocate-General said that the question formulated by the Tribunal did not bring out the real dispute between the parties; that the real question was not whether the dividend income of Rs. 64,926 was exempt from taxation under paragraph 12 of the Concessions Order when the assessee had incurred business loss in Part B States, but it was whether, as suggested by the assessee before the Tribunal, the business loss of Rs. 1,28,182 could be set off against the dividend income of Rs. 64,926 from the companies registered in Part B States u/s 24(1) of the Act. Learned Advocate-General said that as the business loss in Part B States could not be wiped off because of the Inadequacy of the amount of dividend from the companies registered in Part B States, the Department was entitled to adjust the loss against the dividend and carry forward only so much of the loss as could not be so set off.

In reply, Shri Sen, learned counsel for the assessee, argued that paragraph 12 of the Concessions Order, 1950, exempted from charge the dividend income mentioned in that paragraph and if the dividend was not liable to tax it could not also form a part of the total income; that even if paragraph 12 was taken to mean that the dividend income was not excluded from total income, still the Department could not set off the business loss against the dividend income from Part B States u/s 24 of the Income Tax Act and that the question of set-off u/s 24 (1) of the Act would arise only if there was taxable income and the dividend income being exempt from tax was not taxable income. Learned counsel relied on Commr. of Income Tax, Madras v. Ratanshi AIR 1953 Mad 358 and on (1957) 31 ITR 427 .

In our judgment, the learned Advocate-General is right in his grievance that the question framed by the Tribunal for decision fails to bring out the real point of decision. On the facts and circumstances mentioned in the statement of case submitted by the Tribunal, the question is not whether dividend income from companies registered in Part B States is exempt from taxation under paragraph 12 of the Order of 1950 when the assesses incurred business loss in Part B States.

The real question that arises for consideration is as to the set-off u/s 24 (1). There is no dispute that during the material period the assesses resided in a taxable territory and the income which accrued to it was in a taxable territory. Therefore the assessec''s total income be the total amount of income, profits and gains referred to in Section 4(1) and computed in the manner laid down in the Act. This income would necessarily include dividend income from companies registered in Part B States, a taxable territory. Now, the Act nowhere exempts from charge this dividend income. It is also not excluded from the assessee''s total income. Nor does paragraph 12 of the Order of 1950 purport to do this. That paragraph reads as follows:

"Where the total income of an assessee chargeable to tax for the assessment for the year ending on the 31st day of March, 1951, include any income from dividends paid by a company registered in a State in which there was no State Law relating to the charge of Income Tax and super-tax and the dividend is paid out of profits which were not liable to be taxed, in whole or in part, either in the State or in the taxable territories, no Income Tax shall be payable by the assessee on such proportion of the dividend as the non-taxable profits of the company arising in the State bear to the total income of the company."

It will be seen that the scope of this paragraph is very limited. It only deals with the income from dividends paid by a company registered in a Stats of the kind specified in the paragraph which is included in the total income of an assessee chargeable to tax for the year ending on 31-3-1951. They expression "where the total income of an assessee .....includes any income from dividends" necessarily implies that for the applicability of paragraph 12 the dividend income has to be included in the total income.

Further the paragraph does not exempt dividend income from tax. It only says that no income tax shall be payable by the assessee on such proportion of the dividend as the non-taxable profits of the company arising in the State bear to the total income of the company. This is not a provision granting exemption from tax. By paragraph 12 the dividend income of the type referred to therein is made subject to tax. But partial relief in respect of the tax payable on such dividend income is given by saying that no Income Tax shall be payable by the assessee on a certain proportion of the dividend.

The object of the paragraph is obviously to give concession in the matter of the amount of tax payable on such dividends included in the total Income of the assessee for the year ending on 31st March 1951 only and not to exempt them totally from tax. It is, therefore, erroneous to say that under paragraph 12 such dividend income is exempt from tax and, therefore, it is not a taxable Income or that it cannot be included in the total income. It is plain from the language of paragraph 12 that it would come into play only when he has some income assessable to tax.

If there is no net income or gain on which Income Tax has to be paid and thus no question of payment of Income Tax, there can be no question of the assessee being given any relief in the payment of Income Tax as provided by paragraph 12! on the dividend income. If, therefore, the dividend income on being adjusted against the loss still showed "net loss" for the year ending on the 31st March 1951, no question of granting any relief under paragraph 12 in the matter of payment of Income Tax on dividend income can arise. This sufficiently disposes of the question stated for our decision by the Tribunal. But it does not touch the real question whether the business loss can be set off u/s 24 (1) against dividend income from companies registered in Part B States.

Coming now to this question, it is first necessary to say what is taxable under the Act is the aggregate taxable income, profits and gains arrived at in the (manner laid down in Chapter 3 of the Act. In the case of aggregate taxable income, profits and gains from business, profession or vocation, there is thus an adjustment of income, profits and gains of a business, profession or vocation and the loss therein computed in the method prescribed in Chapter 3 of the Act. This is clear from the definition of total income in Section 2 (15), the charging Section 3 and Section 4 dealing with the applicability of the Act to different sources from which total income is derived and from the provisions contained in Chapter 3.

Now, if a loss is incurred in respect of any source of income, then on the ordinary commercial principles of computing profits it must be set off against the profits from the same sources in order to arrive at the income from that source u/s 10 of the Act the assessee is entitled to set off loss from one source against profits from another under the same head so that losses in one business can be adjusted against the profits in another or loss in business can be set off against professional earnings. Section 24 (1) does not relate to set off of losses against profits under the same head. It applies in terms only to the set off of losses under one head against income under any other mentioned in Section 6 of the Act, (see ANGLO-FRENCH TEXTILE COMPANY, LTD. Vs. COMMISSIONER OF Income Tax, MADRAS., .

The question of setting off of losses against profits under another head can arise only if after the adjustment of loss against profits from the same source and the adjustment of loss from one source against profits from another source under the same head the net result is still a loss. The set-off, therefore, u/s 24 is against income on which tax can be levied and collected, that is to say against taxable income.

It follows, therefore, that u/s 24(1) it is not permissible to adjust taxable profits against loss under a head which is not taxable. If a loss under a non-taxable head cannot be adjusted for reducing the profits under a taxable head, the non-taxable loss cannot be added to the loss incurred under the taxable head so as to inflate the right of the assessee to any forward the loss u/s 24 (2). It was on this principle that it was decided in the case of (1957) 31 ITR 427 that the losses made in British India could not be reduced by the Department by adjusting against them the profits in the Indian States which were exempted under Clause (c) of Sub-section (2) of Section 14 (which has now been deleted).

In AIR 1953 Mad 358 also it was held that Section 24(1) speaks of set-off against income which has not already suffered tax but income in respect of which tax could be levied and collected. It must, however, be remembered that the Madras case was not a case of set-off of loss under a taxable head against income under non-taxable head. In case, a loss incurred by a person in speculation was not allowed to be reduced by the Income Tax Department by set-off against the tax share of a person''s profits in an unregistered firm in order to determine the loss to be carried forward u/s 24 (2) on the ground that so to do would be to deprive him of the relief from tax in succeeding years to the extent of such set-off, and this would in effect mean subjecting to double taxation his profits in the unregistered firm.

Here, as we have endeavoured to point out earlier, income from dividend from companies registered in Part B States was not exempt from tax under paragraph 12 of the Concessions Order, 1950. It was taxable to the extent indicated in that paragraph, and had to be included in the total income. If the income from such dividend had far exceeded the loss from business, then the assessee could have claimed to reduce the taxable profits from the dividend income by setting off the business loss. If he could have done that, then the Department can also reduce the balance of losses to be carried forward u/s 24(2) if the business loss far exceeds the dividend income by setting off the business loss against the dividend income.

Learned counsel for the assessee said that Section 24(1) was for the benefit of the assessee and it entitled him and not the Department to claim a set-off of loss against profits to determine the marginal taxable income. It is no doubt true that

Section 24(1) is for the benefit of the assessee and that the, assessee has unqualified right under Sub-section (2) to carry forward the loss of the previous years for being set off against the profits of a subsequent year. But at the same time Sub-section (3) of Section 24 casts a duty on the Income Tax Officer to crystallize and compute the balance of loss which did assessee is entitled to have set off u/s 24 against the profits of a subsequent year. It cannot, therefore, be maintained that in the present case the Department could not minimise the business loss of the assessee by setting it off against the dividend income.

The result, therefore, is that we answer the question submitted to us by the Tribunal by saying that the business loss of the assessee could be set off against the dividend income of Rs. 64,926 from companies registered in Part B States. In view of the circumstances leading to this reference, we make no order as to costs.