PETITIONER:
COMMISSIONER OF INCOME TAX, U.P.

Vs.

RESPONDENT:
SHAH SADIQ AND SONS.

DATE OF JUDGMENT14/04/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
NATRAJAN, S. (J)

CITATION:
1987 AIR 1217 1987 SCR (2) 942
1987 SCC (3) 516 JT 1987 (2) 157
1987 SCALE (1)816
CITATOR INFO :
F 1989 SC1614 (13)

ACT:
Income Tax Act, 1922/Income Tax Act, 1961--S. 24/s. 297-Losses--Right to carry forward 'Accrued under 1922 Act--Whether a vested right---Whether saved by 1961 Act.
General Clauses Act, 1897--s. 6(c)--Effect of--On vested rights.
Statutory Interpretation--'Saving provision' of statute---Construction of--Rights which are accrued are saved unless they are expressly taken away.

HEADNOTE:
The assessee, a partnership firm, enjoyed the status of a registered firm for the assessment years 1960-61, 1961-62 and 1962-63. In the assessment proceedings for the year 1962-63 the assessee claimed that a loss of Rs.60,054 suffered in the speculation business in the assessment year 1960-61 and the loss of Rs.6,839 suffered in the assessment year 1961-62 should be set off against the speculation profit of Rs.58,102 for the assessment year 1962-63. The Income Tax Officer rejected the assessee's claim holding that as the assessee was a registered firm, the losses could be carried forward and set off only by the partners and not by the firm. The appeal by the assessee before the Assistant Appellate Commissioner was dismissed.
In the appeal to the Tribunal, the Tribunal held that the right to carry forward the losses relating to the assessment years 1960-61 and 1961-62 was governed by the Indian Income Tax Act, 1922 and that s. 75(2) of the Income Tax Act, 1961 which was applicable to the assessment year 1960-61 had no application in the facts of this case; that when an Act was passed repealing an earlier enactment, it could not be said to supersede any right already accrued under the repealed enactment unless there was something in the repealing Act to indicate that clearly and, therefore, the assessee was entitled to have the losses brought forward from the preceding two years and set off against the profits earned for the year 1962-63.
In the Reference, the High Court held: (1) that a right had
943

accrued to the assessee by virtue of 1922 Act which entitled him to have the losses from speculation business in respect of the assessment year 1960-61 and 1961-62 to be carried forward and set off against the profits in speculation business of future years; (2) that was a right which had accrued to it before the 1961 Act was brought into force; (3) that by virtue of s. 6 of the General Clauses Act that right continued to subsist and (4) that the Tribunal was right in holding that the assessee was entitled to set off the speculation losses suffered in the assessment years 1960-61 and 1961-62 against the speculation profits of the assessment year 1962-63.

Dismissing the Appeal of the Revenue,

HELD: 1. The Allahabad High Court was in error in the view it took in the decision in Commissioner of Income Tax, Kanpur v. Mangi Ram Gopichand, (111 ITR 807) but it was right in the judgment under appeal and the question was properly answered. [951 G-H]

2. The right created by the operation of s. 24(2) of 1922 Act is a vested right. [951 A-B]

Gujarat Electricity Board v. Shantilal R. Desai, [1969] 1 S.C.R. 580 at 587 and Isha Valimohamad & Anr. v. Haji Gulam Mohamad & Haji Dada Trust, [1975] 1 S.C.R. 720 at 723, referred to.

3. Under the Income Tax Act of 1922, the assessee was entitled to carry forward the losses of the speculation business and set off such losses against profits made from that business in future years. The right of carrying forward and set off accrued to the assessee under the Act of 1922. A right which had accrued and had become vested continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued unless the repealing statute took away such right expressly or by necessary implication. This is the effect of s. 6 of the General Clauses Act, 1897. [951B-D]

4. Whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'saving' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind s. 6(c) of the General Clauses Act, 1897. [951E-F]

944

5. The right to carry forward losses which had accrued under the repealed Income Tax Act of 1922 is not saved expressly by s. 297 of the Income Tax Act, 1961. But it is not necessary to save a right expressly in order to keep it alive after the repeal of the Old Act of 1922. Section 6(c) of the General Clauses Act, 1897 saves accrued rights unless they are taken away by the repealing statute. Taking away of any such rights by s. 297 either expressly or by implication is not found. [951 F]

Commissioner of Income-tax Kanpur v. Mangiram Gopi Chand, 111 ITR 807, overruled.

State of Punjab v. Mohar Singh, A.I.R. 1955 S.C. 84; Reliance Jute Mills Co. Ltd. v. Commissioner of Income-tax, 86 I.T.R. 570; Helen Rubber Industries Ltd. v. Commissioner of Income-Tax, Mysore Travancore-Cochin and Coorg., 36 I.T.R. 544 and Karimtharuvi Tea Estate Ltd. v. State of Kerala, 60 I.T.R. 262, referred to.

T.S. Baliah v.T.S. Rangachari, Income-tax Officer, Central Circle VI. Madras, 72 I.T.R. 787 and Commissioner of Income-tax (Central), Calcutta v.B.P. (India) Ltd., 116 I.T.R. 440, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1598 (NT) of 1974.

From the Judgment and Order dated 26.2.1971 of the Allahabad High Court in I.T. Reference No. 92 of 1966.

C.M. Lodha, N.M. Tandon and Miss A. Subhashini for the Appellant.

Dhananjoy Chandrachud (Amicus Curiae) for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal from the judgment and order of the High Court of Allahabad dated 26th February, 1971. The assessee is a partnership firm which at the relevant time enjoyed the status of a registered firm for the assessment years 1960-61, 1961-62 and 1962-63. In the assessment proceedings for the assessment year 1960-61, the assessee suffered a loss of Rs.60,054 in the speculation business which was to be carried forward for adjustment against speculation profits of future years. For the assessment year 1961-62 also, the assessee had suffered a loss amounting to Rs.6,839 in

945

speculation business and this was also to be carried forward for adjustment against speculation profits of future years. For the assessment year 1962-63 which is the year with which this appeal is concerned, the assessee made a profit of Rs.58,102 from speculation business. In the assessment proceedings for that year the assessee claimed that a loss of Rs.60,054 suffered in respect of the assessment year 1960-61 and the loss of Rs.6,839 suffered in respect 0" the assessment year 1961-62 should be set off against this speculation profit of Rs.59,102 for this year. If that had been done, the speculation profits of the year under consideration would have been absorbed completely by the losses brought forward from the preceding years.

The Income-tax Officer, however, rejected the assessee's claim. He held that as the assessee was a registered firm, the losses could be carried forward and set off only by the partners and not by the firm. The appeal by the assessee before the Assistant Appellate Commissioner was dismissed. The assessee went up in appeal to the Tribunal. The Tribunal held that the right to carry forward the losses relating to the assessment years 1960-61 and 1961-62 was governed by the Indian Income-tax Act, 1922 (hereinafter called the '1922 Act') and the section 75(2) of the Income-tax Act, 1961 which was applicable to the assessment year 1960-61 had no application in the facts of this case. The Tribunal was of the view that when an Act was passed repealing an earlier enactment, it could not be said to supersede any right already accrued under the repealed enactment unless there was something in the repealing Act to indicate that clearly. The Tribunal, therefore, held that the assessee was entitled to have the losses brought forward from the preceding two years and set off against the profits earned for the year 1962-63 and accordingly allowed the appeal.

The revenue sought for reference to the High Court of Allahabad on the following question:

> "Whether, the assessee is, in law, entitled to set off of the speculation losses suffered in the assessment years 1960-61 and 1961-62 against the speculation profits of the previous year?"

The High Court considering the provisions of section 75

of 1961 Act came to the conclusion that a right had accrued to the assessee by virtue of 1922 Act which entitled him to have the losses from speculation business in respect of the assessment year 1960-61 and 1961-62 to be carried forward and set off against the profits in speculation busi-
946
ness of future years. The High Court was of the view that that was a right which had accrued to it before the 1961 Act was brought into force. The High Court came to the conclusion that by virtue of section 6 of the General Clauses Act that right continued to subsist. The High Court, therefore, was of the view that the Tribunal was fight in holding that the assessee was entitled to set off the speculation losses suffered in the assessment years 1960-61 and 1961-62 against the speculation profits of the previous year 1962-63.

In appeal on behalf of the revenue before us, it was contended that the High Court was in error. Our attention was drawn to the provisions of section 24(2) of 1922 Act which, inter alia, provided that where any assessee sustained any 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 31st day of March, 1940, in any business, profession or vocation, and the loss could not be wholly set off under sub-section (1) of section 24 of the said Act, so much of the loss as was not so set off or the whole loss where the assessee had no other head of income would have been carried forward in the manner indicated therein. So, therefore, the 1922 Act 'gave a right to set off speculation losses against speculation profits and to the extent it was unabsorbed, it had a fight to carry forward the losses for the future years to be set off against speculation profits for future years. It was submitted that in a way it was vested right--a fight on assessment to set off the losses against the profits of the year in question and if not fully absorbed to carry forward to be set off against the profits of future years. It was submitted on behalf of the revenue that it therefore continued so long as the Act permitted the setting off in that manner. It was, however, urged that in view of the coming into operation of 1961 Act which came into operation on 1st of April, 1962, that fight no longer was there with the assessee. Section 75 of 1961 Act provided an entirely new scheme. It was as follows:

> "75. Losses of registered firms.---(1) Where the assessee is a registered firm, any loss which cannot be set off against any other income of the firm shall be apportioned between the partners of the firm, and they alone shall be entitled to have the amount of the loss set off and carried forward for set off under sections 70, 71, 72, 73, 74 and 74A.
>
> (2) Nothing contained in sub-section (1) of section 72, sub-section (2) of section 73, sub-section (1) of section
> 947
> 74 or sub-section (3) of section 74A shall entitle any assessee, being a registered firm, to have its loss carried forward and set off under the provisions of the aforesaid sections."

As a result of sub-section (2) of section 75 of the said Act, there is prohibition, according to the revenue, entitling the assessee being registered firm to have its loss

carried forward and set off under the provisions except in the manner indicated in sub-section (2) of section 75 of the Act.

It was submitted that as the assessment for the year 1962-63 had to be made under the provisions of 1961 Act, the assessee could not have the benefit of set off of the carried forward loss. In support of this contention reliance was placed on the decision of the Allahabad High Court in Commissioner of Income-tax, Kanpur v. Mangiram Gopi Chand, 111 I.T.R. 807 where it was held that a registered firm could, so long as the 1922 Act was in force, carry forward speculation loss, if it could not be set off against speculation income of the year in question. However, the Court observed after coming into force of 1961 Act, specific provisions had been made in respect of losses of registered firms and such right of set off of speculation losses was no longer available. The High Court was of the view that the right of a registered firm to set off and carry forward losses under section 24(2) of the 1922 Act was a substantive right. However, where a repealing provision indicated the effect of the repeal on previous matters and provided for the operation of the previous law in part as also the operation of the new law in the other part in positive terms, the repealing and saving provision could be said to be self-contained and excluded the applicability of section 6, according to the Allahabad High Court, of the General Clauses Act. Section 297(2) of 1961 Act, according to the Allahabad High Court, must be taken to be a self-contained code in respect of the operation of 1922 Act and the rights which might have been created under it. Inasmuch as section 297(2) of the 1961 Act did not save, said the Allahabad High Court, the right, if any, of a registered firm to set off its speculation losses, which have been carried forward, against the speculation profits of the firm, the right, if any, created by section 24(2) could not be said to remain intact after the repeal of the 1922 Act. Speculation losses of years anterior to 1962-63 could not, therefore, be carried forward and set off against speculation profits of a registered firm. The Allahabad High Court considering the decision of this Court in State of Punjab v. Mohar Singh, A.I.R. 1955 S.C. 84 observed that the principle laid down by this Court was that where the repealing provision indicated the effect of repeal on previ-

948

ous matters and provided for the operation of the previous law in part and in negative terms as also for the operation of the new law in other part in positive terms, the repealing and the saving provision could be said to be self-contained Act. While we respectfully agree with the principle applicable in interpreting the application of the Act, we are of the opinion that the Allahabad High Court was not fight in the application of that principle in the light of section 297(2) of 1961 Act in the aforesaid decision. There is nothing in any of the clauses of subsection (2) of section 297 of the Act which indicates that accrued rights under 1922 Act lapsed in respect of the assessment to be made after coming into operation of 1961 Act. According to the Allahabad High Court in that decision, section 297(2)(a) provided for completion of assessment in accordance with the old Act where the return was filed before the commencement of the 1961 Act but section 297(2)(b) of the Act provided for completion of assessment in accordance with the provision of the new Act where the return was filed even in respect of years covered by the 1922 Act, after 31st March, 1962. Reading section 297 in the manner it did, the Allaha-

bad High Court was of the view that where the provisions of the previous Act stood repealed, the set off cannot be given. The Allahabad High Court had, it appears, no occasion to notice the judgment under appeal.

On behalf of the revenue, reliance was also placed on a decision of the Calcutta High Court in the case of Reliance Jute Mills Co. Ltd. v. Commissioner of Income-tax, West Bengal 1, 86 I.T.R. 570 on the question of carry forward of the loss after the coming into operation of the Finance Act, 1955. The principle enunciated therein, in our opinion, will have no application to the controversy in the present case. Our attention was also drawn by the revenue to the decision of the Kerala High Court in the case of Helen Rubber Industries Ltd. v. Commissioner of Income-Tax, Mysore, Travancore-Cochin and Coorg, 36 I.T.R. 544. The Kerala High Court observed that the loss incurred in Travancore (in a Part B State) by the assessee during M.E. 1123 which could only have been carried forward for two years in accordance with the provisions of section 32(2) of the Travancore Income-tax Act, 1121, could be carried forward beyond those two years for a period of six years in accordance with sections 24(2) of the Indian Income-tax Act, 1922 for the assessment year 195 1-52, as the Indian Income-tax Act, 1922 was applicable for that assessment year and the assessee had the right to carry forward losses in accordance with the provisions of that Act. The High Court had to construe section 3 of the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950. This case must also be understood in the background of
949
the facts of that case which are different from the instant case with the provisions with which we are concerned. That was not a case of deciding whether the vested right was curtailed and if so to what extent.

This Court in Karimtharuvi Tea Estate Ltd. v. State of Kerala, 60 I.T.R. 262 observed that it was well-settled that the Income-tax Act as it stands amended on the first day of April of any financial year must apply to the assessment of the year. Any amendments in that Act which came into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment was actually made after the amendments came into force. There, the Kerala Surcharge on Taxes Act, 1957, having come into force on 1st September, 1957, being the date appointed by the Kerala Government under section 1(3) of the Act, and not being retrospective in operation, by express intendment or necessary implication, could not be made applicable from 1st April, 1957. Since the Act was not the law in force on 1st April, 1957, no surcharge on agricultural income-tax could be levied under that Act in respect of the assessment year 1957-58. That decision had also not dealt with the question of affecting vested rights.

In our opinion the right given to the assessee for the assessment year 1961-62 under section 24(2) of 1922 Act was an accrued right and a vested right. It could have been taken away expressly or by necessary implication. It has not been so done. Neither section 297(2)(b) nor any other sub-clauses of sub-section (2) of section 297 indicates contrary intention of the legislature regarding any vested right of the assessee under the 1922 Act. On the contrary section 6(c) of the General Clauses Act indicates that right should be preserved.

Reliance may be placed on the observations of this Court in T.S. Baliah v.T.S. Rangachari, Income-tax Officer, Central Circle VI, Madras, 72 I.T.R. 787. This Court observed

that the provisions of section 52 of the Indian Income-tax Act, 1922, do not alter the nature or quality of the offence enacted in section 177 of the Indian Penal Code, 1860. They merely provide a new course of procedure for what was already an offence. There is no repugnancy or inconsistency; the two enactments can stand together and they must be treated as cumulative in effect. This Court, however, observed that in enacting section 297(2) of the Income-tax Act, 1961, it was not the intention of the Parliament to take away the right of instituting prosecutions in respect of proceedings which were pending at the commencement of the Act. Parliament had not made any detailed provision for the
950
institution of prosecutions in respect of offences under the 1922 Act. Section 6(e) of the General Clauses Act, 1987 applied for the continuation of such proceedings after the repeal of the Indian Income-tax Act, 1922, and a legal proceeding in respect of an offence committed under the 1922 Act may be instituted after the repeal of the 1922 Act by the 1961 Act. The Court reiterated that before coming to the conclusion that there is a repeal of an earlier enactment by a later enactment by implication, the court must be satisfied that the two enactments are so inconsistent or repugnant that these could not stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment.

In Commissioner of Income-Tax (Central), Calcutta v.B.P. (India) Ltd., 116 I.T.R. 440 the Calcutta High Court was concerned with section 25(3) of the 1922 Act. It is not necessary to set out in extenso the facts of that case. It suffices to say that the discontinuance of the assessee's business in that case took place on 28th February, 1962. It could not be disputed that if the 1961 Act had not come into effect, the assessee would have been entitled to get the relief as granted by virtue of section 25(3) of the 1922 Act. It was observed that on a reading of section 6 of the General Clauses Act, 1897, it was clear that unless a contrary intention appears, the repeal of an Act does not affect any existing right, privilege, obligation or liability. It is, therefore, necessary to find out from the provisions of section 297 of the 1961 Act which.repeals the 1922 Act, whether the old rights and liabilities have been intended to be destroyed. There was no corresponding provision under the 1961 Act dealing with the type of claims mentioned in sub-section (3) or (4) of section 25 of the 1922 Act. It was contended by the revenue that what was not said was destroyed and such intention would be apparent in that case from section 297(2)(h) of the 1961 Act. The High Court referred to the 12th Report of the Law Commission, and Speaking for the Court, one of us (Sabyasachi Mukharji,J.) said that it was not possible to accept the submission for the revenue that whatever was not said was destroyed. The Court reiterated that there must be a manifest intention of Parliament to destroy a right or privilege under the old Act. There is no such provision in the new Act. In the instant case also, section 75(2) dealt with a different scheme of carrying forward of loss but it did not speak of any accrued right. It did not destroy either by express words or by necessary implication the vested right given to an assessee under section 24 (2) of the Act of 1922. Therefore, unless one finds in section 297 or within the four-corners of the General Clauses Act any intendment express or implied of destroying the rights created by section 24(2) of
951
carrying forward the losses to set off in subsequent years

in case of speculation business that right cannot be said to be destroyed.

The fact that the fight created by the operation of section 24(2) is a vested right cannot in our opinion be disputed. See in this connection the observations of this Court in Gujarat Electricity Board v. Shantilal R. Desai, [1969] 1 S.C.R. 580 at 587 and Isha Valimohamad & Anr. v. Haji Gulam Mohamad & Haii Dada Trust, [1975] 1 S.C.R. 720 at 723.

Under the Income Tax Act of 1922, the assessee was entitled to carry forward the losses of the speculation business and set off such losses against profits made from that business in future years. The fight of carrying forward and set off accrued to the assessee under the Act of 1922. A right which had accrued and had become vested continued to be capable of being enforced notwithstanding the repeal of the statute under which that fight accrued unless the repealing statute took away such right expressly or by necessary implication. This is the effect of section 6 of the General Clauses Act, 1897.

In this case the 'savings' provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words, whatever fights are expressly saved by the 'savings' provision stand saved. But, that does not mean that fights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section 6(c) of the General Clauses Act, 1897. The right to carry forward losses which had accrued under the repealed Income-tax Act of 1922 is not saved expressly by section 297 of the Income-tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the Old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by section 297 either expressly or by implication.

We are, therefore, of the opinion that the Allahabad High Court was in error in the view it took in the decision in Commissioner of Income-tax, Kanpur v. Mangiram Gopi Chand (supra) but the High Court of Allahabad was fight in the judgment under appeal and the question was properly answered.

The assessee in person did not appear at the time of the heating

952

of this appeal. We requested Shri Chandrachud to assist us as amicus curiae. We record that Shri Chandrachud has rendered very able assistance to us in disposing of this appeal. This Court records its appreciation of the help rendered by him.

The appeal in the premises fails and is dismissed with costs assessed at Rs.2,500 which amount should be paid to the amicus curiae.

A.P.J. Appeal dismissed.

993