

PETITIONER:
COMMISSIONER OF INCOME-TAX, ANDHRA PRADESH, HYDERABAD

Vs.

RESPONDENT:
A. DHARMA REDDY, MORTHAD

DATE OF JUDGMENT:
19/02/1969

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

CITATION:
1969 AIR 940 1969 SCR (3) 782
1969 SCC (1) 580

ACT:
Income-tax Act (11 of 1922), s. 24(2)(ii) as amended in 1955--Loss sustained by a partner in a dissolved firm, if can be set off against profit earned in another firm in the subsequent year.

HEADNOTE:
The assessee carried on two businesses in Bidi leaves as partner in two different firms. The first firm consisted of two partners, and the second of four; both these firms were assessed to income tax separately and it was admitted that the two firms had nothing to do with each other. The first firm sustained losses and was dissolved. The assessee claimed that the losses sustained by him in the previous year (sustained in the first firm) should be carried forward and set off against his profit in the subsequent year (earned in the second firm) under s. 24 (2) (ii) of the Income-tax Act, 1922 as the assessee carried on the business in Bidi leaves during that year. The Income-tax Officer rejected the claim, and his order was upheld by the Appellate Assistant Commissioner. But the Appellate Tribunal accepted the claim and the question was answered by the High Court in the assessee's favour. The Revenue appealed to this Court and contended that for getting the benefit under s. 24(2) (ii) the same concern or partnership which carried on in the previous year should continue to function in the year of assessment.

HELD : The appeal must be dismissed.
In order to get the benefit of s. 24 (2) (ii) of the Act especially after the amendment made by the Finance Act 1955 it was not necessary that the assessee should carry on the same business in the year of assessment. The change in the language of the provision substituted by the Amending Act was significant and all that the assessee had to show was that the business in which loss was originally sustained continued to be carried on by him in the assessment year. If the first partnership was dissolved it did not mean that his business in Bidi leaves came to an end so long as he continued to do that business either individually or in partnership with others. During the assessment year in

question he was carrying on that business in partnership with three others. According to the provisions of s. 24(2) as they stood before the amendment made by the Finance Act of 1955 he continued to carry on the same business but for the purpose of the present case s. 24(2) (ii) as it stood after the amendment was relevant and on the plain language of the aforesaid provision the business in which the loss was originally sustained was continued during the assessment year. The word "business" has been defined in s. 2(4) of the Act as including any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. These words are of wide import the underlying idea being of continuous exercise of an activity. In the present case, the business did not depend on the constitution of a partnership firm through which it was carried on nor could it come to an end so long as the assessee carried on the same systematic or organised course of activity with a set purpose. [786 G--787 C]

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When the profits of a registered firm are ascertained, the assessee for the purpose of paying tax is not the registered firm but each partner of that firm. The identity of the business for the purpose of s. 24(2)(ii) does not change by reason of the change in persons who carry on that business since it continues to be carried on by the same individual. A set off for loss which had been carried forward from the earlier years under the provisions of s. 24 would only be available to the individual partner who had suffered the loss and not to the other partners of the firm or the firm. [787 F]

Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax, [1954] 26 I.T.R. 765, 773, Dwarkadas Leeladhar v. Commissioner of Income-tax, Kerala, 47 I.T.R. 619, S. Narain Singh v. Commissioner of Income-tax, Delhi, 66 I.T.R. 341 and Sitaram Motiram Jain v. Commissioner of Income-tax, 43 I.T.R. 405, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1057 of 1966.

Appeal from the judgment and order dated April 17, 1964 of the Andhra Pradesh High Court in Case Referred No. 48 of 1962.

S. Mitra, R. N. Sachthey and B. D. Sharma, for the appellant.

S. T. Desai and K. Jayaram, for the respondent.

The Judgment of the Court was delivered by Grover, J. This is an appeal by certificate from a judgment of the High Court of Andhra Pradesh answering the following question referred to it by the Tribunal arising out of the assessment of the assessee for the assessment year 1956-57 in the affirmative and in his favour :

"Whether the assessee is entitled under the provisions of Section 24(2) of the Act to set off his share of unabsorbed loss amounting to Rs. 24,532 from the dissolved firm to M/s. A. Dharma Reddy, Morthad brought forward from the assessment year 1955-56 against his other business income for the assessment year 1956-57."

The assessee is an individual whose only sources of income were his shares in several partnership concerns. Apart from the firms which carried on other businesses there were two

firms which carried on the business in Bidi leaves. The first was styled as M/s. A. Dharma Reddy, Morthad. The second firm was called A. Dharma Reddy & Co., Ditchpally. The first partnership was dissolved on March 31, 1955 but the second one continued during the assessment year 1956-57. During the assessment year 1955-56 the assessee sustained a loss of Rs. 30,255 in the first firm. As he was carrying on several other businesses, after the necessary set off the total loss sustained by him for that year came to Rs. 24,532. During the assessment year 1956-57 the

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assessee's profit in the second firm was estimated at Rs. 11,853 and his total taxable income was assessed at Rs. 28,758 for that assessment year. As the assessee carried on the business in Bidi leaves during that year he claimed that the loss sustained by him in the previous year viz., assessment year 1955-56 should be carried forward and set off against his profit in the subsequent year 1956-57 under S. 24(2)(ii) of the Income tax Act 1922, hereinafter called the "Act". The Income tax Officer rejected the claim. His view was that the set off could be allowed only if the business, profession or vocation in which loss was originally sustained continued to be carried on by the assessee during the relevant assessment year. According to him the business in which the loss of Rs. 30,255 had been incurred had ceased to exist because of the dissolution of that firm on March 31, 1955. The Appellate Assistant Commissioner in appeal considered the constitution of the two firms. The first consisted of two partners in which originally the loss had occurred and which had ceased to exist in the relevant assessment year. The second firm against whose income the loss was sought to be set off consisted of four partners. Both the firms had filed separate returns and were assessed separately for the assessment year 1955-56. The assessee had admitted in a letter dated September 16, 1960 that the two firms had nothing to do with each other and there was no material to show that the business of the dissolved firm was taken over by the other firm. The Appellate Assistant Commissioner, therefore, came to the conclusion that the business in which the loss was originally sustained could not be said to have continued during the assessment year 1956-57. The assessee took the matter to the Income tax Appellate Tribunal which upheld the contention of the assessee that the same business of Bidi leaves continued during the assessment year. According to the Tribunal the assessee was carrying on two businesses in Bidi leaves as partner in two different firms. One of these firms was dissolved but he continued to carry on the same business in conjunction with his co-partners in the year under appeal. The High Court disposed of the matter in a fairly simple way. It was observed

"When a firm carries on business. it is a business carried on by the partners of that firm and the individual partners of that firm are assessed to tax. When the profits of a registered firm are ascertained, the assessee, for the purpose of paying the tax, is not the registered firm, but each partner of the registered firm. In the present case, it was in the business in the beedi leaves that the assessee sustained a loss for the assessment year 1955-56. He carried on the same business in beedi leaves during the accounting year 1955-56 i.e., the assessment year 1956-57 though in partnership

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with others. Entering into partnership with another in one case and three others in the other case, was only the mode of carrying business; but the business is the same business viz., trade in beedi leaves.

Section 24 (2) (ii) does not require that the business should be continued to be carried on for the assessment year in question by the same concern or partnership or firm as in the previous year when the loss was originally sustained by the assessee. The only condition prescribed by that clause is that the same business must be continued to be carried on by "him" (the assessee)".

In order to dispose of the contentions of the learned counsel for the Income tax Commissioner who is the appellant before us it is necessary to set out the relevant statutory provisions. Before the amendment made by the Finance Act of 1955 s. 24(2), was 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 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-section (2) of s. 24 was substituted by S. 16 of the aforesaid Finance Act. The material portion was in the following terms :-

"(2) Where any assessee sustains a loss of profits or rains 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

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(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."

The arguments of the learned counsel for the appellant are based mainly on the fact that the partners of the two firms were different although the assessee was a partner of both the firms. It is contended that since the first firm was dissolved on March 31, 1955 it could not be said that the business in which the loss was sustained continued to be

carried on by the assessee during the assessment year 1956-57 within the meaning of s.24(2)(ii) of the Act. For getting the benefit under that section it was essential that the business in which the loss was sustained should be continued to be carried on for the assessment year in question. This means that the same concern or partnership which carried on the business in the previous year should continue to function in the year of assessment.

There is no warrant for the proposition put forward on behalf of the appellant that in order to get the benefit of s. 24(2) (ii) of the Act especially after the amendment made by 'the Finance Act 1955 the assessee should carry on the same business partnership in the year of assessment. The change in the language of the provision substituted by the Amending Act is significant and all that the assessee has to show is that the business in which loss was originally sustained continued to be carried on by him in the assessment year. Now, in the present case, the assessee carried on the business in bidi leaves apart from other businesses. This business he was doing in partnership with another person. Nevertheless the business was of taking contracts in respect of or dealing in bidi leaves, This business he could do either individually or in partnership with some one else. If the first partnership was dissolved it did not mean that his business in bidi leaves, came to an end so long as he continued to do that business either individually or in partnership with others. During the assessment year in question he was admittedly carrying on that business in partnership with three others. It could well be said that even according to the provision of s. 24(2) as they stood before the amendment made by the Finance Act of 1955 he continued to carry on the same business but for the purpose of the present case it is s. 24(2) (ii) as it stood after the amendment which is relevant and we fail to see on the plain language of the aforesaid provision how it could be held that the business in which the loss was originally sustained was not con-

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tinued during the assessment year 1956-57. The word "business" has been defined in s. 2 (4) of the Act as including any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, These words are of wide import the underlying idea being of continuous exercise of an activity. As pointed out by S. R. Das, J. (as he then was) in *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax*(1), the word "business" connotes, some real substantial and systematic or organised course of activity or conduct with a set purpose. The systematic or organised course of activity of the assessee, in the present case, consisted of dealings or taking of contract in bidi leaves. That business did not depend on the constitution of a partnership firm through which it was carried on nor could it come to an end so long as the assessee carried on the same systematic or organised course of activity with a set purpose.

The computation of a partner's share in the firm's profits is dealt with by s. 16(1) (b). The proviso thereto lays down that if his share was computed as a loss such loss may be set off or carried forward and set off in accordance with the provision of s. 24. Under s. 23 (5) when the assessee is a registered firm and the total income of the firm has been assessed under sub-ss. (1), (3) or (4) as the case may be, the total income of each partner of the firm including therein his share of its income, profits and gains of the previous year shall be assessed and the sum payable

by him on the basis of such assessment shall be determined. There is a proviso which says that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of S. 24. The High Court was right in saying that when the profits of a registered firm are ascertained the assessee for the purpose of paying the tax is not the registered firm but each Partner of that firm. In a number of decided cases it has been held that the identity of the business for the purpose of s. 24(2)(ii) does not change by reason of the change in persons who carry on that business since it continues to be carried on by the same individual. The Kerala High Court in Dwarkadas Leeladhar v. Commissioner of Income tax, Kerala (2) held that where a registered firm which was working at a loss was dissolved and one of the partners continued the same business as a sole proprietor he was entitled to set off his share of the loss incurred by the firm against the profits accruing to him from the business as a sole proprietor. The Delhi High Court in S. Narain Singh v. Commissioner of Income tax, Delhi(3) had to deal with a case where an assessee had taken certain liquor contracts and carried on the business of sale of liquor in his individual name and sustained losses. Subsequently

(1) [1954] 26 I.T.R. 765, 773.

(2) 47 T.T.R. 619,

(3) 66 I.T.R. 34 1, 788

he carried on the same business with 10 other persons and sought to set off the previous losses against the profits made in the accounting year. Referring to the meaning the construction of the words "same business" as they stood in S. 24(2) before the amendment made by the Finance Act of 1955, it was held that the assessee was entitled to carry forward the losses for the previous year and have them set off against the share of his income of the registered firm during the assessment year because the business in which the loss was sustained was the same business.

In both the above cases reference was made to the decision of the Gujarat High Court in Sitaram Motiram Jain v. Commissioner of Income-tax(1). In that case an assessee had incurred losses in a business carried on by him as the sole proprietor and a registered firm of which he was a partner took over that business as a running concern. The question was whether he could have the losses incurred by him in the business which he carried on as the sole proprietor carried forward and set off against his share of the profits of the registered firm. After referring to s. 24(2) (ii) and s. 23 (5) it was observed, what has to be determined in the case of a registered firm is the total income of each partner in the firm as the individual partners are assessed to tax and not the firm as such. A set off for loss which had been carried forward from the earlier years under the provisions of s. 24 would only be available to the individual partner who had suffered the loss and not to the other partners of the firm or the firm.

In our judgment there could be no manner of doubt that the business in which the loss had been sustained by the assessee when he was a partner of the first firm which was dissolved on March 31, 1955 continued to be carried on by him in partnership with three other persons during the assessment year 1956-57, the business, as stated before, being of dealing in or entering into contracts in respect of bidi leaves. The mode in which he carried on the business in bidi leaves was one of taking other persons as partners. He did not stop doing that business in the assessment year in question.

The view taken by the High Court, in the present case, is unexceptionable and must be upheld. The appeal fails and it is dismissed with costs.

Y.P.

(1) 43 I.T.R. 405,

Appeal dismissed.

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