

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL MISCELLANEOUS

Before D. Falshaw and G. L. Chopra, JJ.

M/s MANOHAR LAL-MUNSHI LAL,—Petitioner

versus

THE COMMISSIONER OF INCOME-TAX, NEW DELHI,—
Respondent

Income Tax No. 8 of 1957

Income-tax Act (XI of 1922)—Sections 10 and 24(1) Proviso—Proviso to section 24(1)—Whether applies to set off under section 24 or applies to computation of income under section 10 under the head "Profits and gains of business, profession or vocation"—Losses incurred in a speculative business—Whether can be set off against profits earned by the assessee from other business.

Held, that the words of the proviso to sub-section (1) of section 24 of the Income-tax Act, 1922, are clear and free from any ambiguity whatever and their plain meaning is that in computing the profits and gains from a business, profession or vocation under section 10 of the Income-tax Act any losses incurred in a speculative business are to be left out of account except to the extent of the amount of profits and gains, if any, earned in any other business consisting of speculative transactions. Consequently the loss suffered by an assessee in his speculation business cannot be set off against the profits earned by him in the

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other business. Loss from speculative business can only be set off against profits earned from speculative business or transactions.

Income-tax Appellate Tribunal under section 66(1) of the Income-tax Act on the following question of law referred to the High Court for the opinion of their Lordships :—

“Whether on a true interpretation of section 10 and the first proviso to sub-section 1 of section 24 of the Indian Income-tax Act, the loss of Rs. 20,206 suffered by the assessee in its speculation business could be set off against the profits earned by it in the other business ?”

MOHAN BEHARI LAL, ADVOCATE, for the Petitioner.

HARDIAL HARDEY AND D. K. KAPUR, ADVOCATES, for the Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—This case has been referred to the High Court by the Income-tax Appellate Tribunal under section 66(1) of the Income-tax Act in the following circumstances.

The assessee at whose instance the reference has been made, is a registered firm, Messrs Manoharlal-Munshi Lal, carrying on business *inter alia* as an agent of the Hindustan Vanaspati Manufacturing Company Ltd. and during the assessment year 1953-54, accounting period ending 14th of March, 1953, the firm earned profits in its trading accounts, but lost a sum of Rs. 20,206 in certain speculative transactions. This sum was sought to be set off against the profits earned in other business. The Income-tax Officer, the Appellate Assistant Commissioner and finally the Income-tax Appellate Tribunal, after a difference between the learned members, who

heard the appeal originally and a reference to a third member, all held that the loss in the speculative transactions cannot be set off against the assessee's profits in other trading business in the light of the first proviso contained in sub-section (1) of section 24 of the Income-Tax Act.

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On the application of the assessee the Tribunal has referred the following question:—

“Whether on a true interpretation of section 10 and the first proviso to sub-section (1) of section 24 of the Indian Income-tax Act, the loss of Rs. 20,206 suffered by the assessee in its speculative business could be set off against the profits earned by it in the other business?”

Section 6 sets out the sources of taxable income under six heads:

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Income from property.
- (iv) Profits and gains of business, profession or vocation.
- (v) Income from other sources.
- (vi) Capital gains.

The subsequent sections contain the principles on which income under these various heads is to be computed, section 10 dealing with profits and gains arising from business, profession or vocation.

These sections are contained in Chapter III of the Act dealing with “Taxable Income”. This Chapter is followed by Chapter IV dealing with “Deductions and Assessment”. Section 24 deals

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“Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 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.”

This is followed by a proviso introduced by the Finance Act of 1953 which reads:—

“Provided that in computing the profits and gains chargeable under the head “Profits and gains of business, profession or vocation”, any loss sustained in speculative transactions which are in the nature of a business shall not be taken into account of profits to the extent of the amount of profits and gains, if any, in any other business consisting of speculative transactions:”

The question which arises is whether this is a proviso which only comes into operation when the question arises under section 24 for setting off losses under one of the heads contained in section 6 against profits earned under other heads or whether it is intended also to apply when income is being computed under section 10 under the head “Profits and gains of business, profession or vocation”.

The main lines of arguments open to an assessee in such a case are clear and two-fold, firstly the general principle well-affirmed by authority that where a proviso is inserted in a

particular section or sub-section, its application is limited to the provisions of the section or sub-section in question, and secondly that if it was intended to lay down a principle for computing profits and gains of business, profession or vocation the legislature could have incorporated a suitable amendment in the provisions of section 10 itself. At the same time the words of the proviso appear to be clear and free from any ambiguity whatever and their plain meaning is that in computing the profits and gains from a business, profession or vocation any losses incurred, in a speculative business are to be left out of account except to the extent of the amount of profits and gains, if any, in any other business consisting of speculative transactions, and so *prima facie* it appears to me that the decisions of the Income-tax Officer, the Appellate Assistant Commissioner and the majority of the Appellate Tribunal are correct.

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The proviso appears to have only come before the High Courts for consideration in two cases, *Keshavlal Premchand v. Commissioner of Income-tax, Ahmedabad* (1), a decision of the Bombay High Court, and *Commissioner of Income-tax, Nagpur and Bhandara v. Ramgopal Kaniyalal* (2), a decision of the Madhya Pradesh High Court. In both of these cases the learned Judges have taken the view that the proviso in section 24(1) governs section 10 and modifies the manner of computation under that section. In both the cases the learned Judges have taken the view that although the general principle of law is that the effect of a proviso is limited to the section in which it is included, there may be cases in which the language of the proviso is such that it clearly embodies a substantive enactment, and this is conceded even

(1) (1957) 31 I.T.R. 7.
(2) (1960) 38 I.T.R. 193.

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in the judgment of the Supreme Court relied on by the assessee in the present case in *The Commissioner of Income-tax, Mysore, Travancore-Cochin and Coorg, Bangalore, and The Commissioner of Income-tax, Bangalore v. The Indo-Mercantile Bank Limited and Pangal Vittal Nayak and Company Limited* (1), where the general principle is restated with the qualification, "unless the language used expressly or by necessary intendment leads to that conclusion," (i.e. that the proviso embodies a substantive enactment).

The reasoning of Chagla, C.J., in the Bombay case cited appears to be clear and cogent. He observed:—

"Chapter III in which these sections appear is headed "Taxable Income", and then comes Chapter IV which deals with deductions and assessment, and then we come to section 24 which deals with set-off of loss in computing aggregate income. It is, therefore, clear that the question of set-off only arises after the profits and gains of a business, profession or vocation have been computed in the manner laid down in Chapter III. The process of computation as understood by the Income-tax Act is antecedent to the question of the right of the assessee to claim any set-off under section 24. The question of set-off only arises when there is a loss under one head, the loss having been arrived at in the manner of computation laid down in Chapter III, and there is a profit under another head, the profit having been arrived at in the manner laid down in Chapter III.

(1) A.I.R. 1959 S.C. 713.

Therefore, it is impossible to accept Mr. Palkhivala's contention that when the Legislature referred in the proviso to the computation of profits and gains chargeable under the head "profits and gains of business, profession or vocation," the Legislature was referring to the loss to be ascertained for the purpose of a set-off under section 24(1). It was entirely unnecessary to compute the profits and gains of a business, profession or vocation for the purpose of section 24(1) because that had already been done under section 10(2). If it was intended to convey by the proviso that the resultant loss in the business had to be ascertained, then the language used by the Legislature would have been very different from the language actually used. Mr. Palkhivala wants to paraphrase the proviso to mean that in the loss suffered in a business if there is any loss due to a speculative transaction then that loss cannot be set off against another head. Now, to do this is not to paraphrase the proviso but to re-write it and to substitute an entirely different provision for what the legislature has done. It is clear, therefore, on the language of the proviso itself and on the scheme of the Act, that the Legislature in enacting the so-called proviso was enacting a substantive provision dealing with the mode of computing the profits and gains chargeable under the head "profits and gains of business, profession or vocation," and what the Legislature provi-

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ded was that when you compute these profits and gains, the loss sustained in a speculative transaction must not be taken into account except to the extent of the amount of profits and gains, if any, in any other business consisting of a speculative transaction. It is not as if the proviso has no connection whatever with section 24(1). In one sense it has, because what is available for being set off is the resultant profit or loss under section 24(1) and the proviso sets out the mode of arriving at the resultant profit or loss in the computation of profits and gains of a business, profession or vocation."

The learned Judges of the Madhya Pradesh High Court, Shrivastava and Sharma JJ., had before them and considered the remarks of the Supreme Court in the case of the *Indo Mercantile Bank Ltd.* (1) before they also came to the conclusion that the language of proviso in section 24(1) could only be interpreted as governing the method of computation of profits and gains of business, profession or vocation under section 10, and they expressed agreement with the view of the Bombay High Court. I also am of the opinion that this view is correct and would accordingly answer the question referred to us in the negative. The assessee will pay the costs of the Commissioner on the reference. Counsel's fee Rs. 250.

G. L. CHOPRA, J.—I agree.

B.R.T.

(1) A.I.R. 1959, S.C. 713