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that the Appellate Authority has no power to decide the appeal finally when an appeal is filed under section 64(a) against the refusal to grant a permit to the appellant. Moreover, before an appeal is filed, the Transport Authority has to comply with the provisions of section 57, which was admittedly done in the present case, and then the record goes to the Appellate Authority for decision of the appeal. No reason has been brought to my notice which should impel me to hold that in such circumstances the Appellate Authority has no power to decide an appeal finally but has to remand the case for observing afresh the provisions of section 57 of the Act and then the Transport Authority should grant additional permit or permits. Such a procedure, while unnecessary, must cause considerable delay in disposing of the matter finally. If the contention of the learned counsel is accepted, then an appeal cannot be decided finally within a reasonable time because after every remand there will be a fresh right of appeal to all applicants and then this process can be continued indefinitely because after every decision on remand an applicant can move the Appellate Authority who can never pass a final order. This reduces the right of appeal under section 64(a) for grant of permit into a farce. I have, therefore, no hesitation in rejecting this contention.

No other point was argued before us. This appeal, therefore, fails and is dismissed with costs.

Falshaw, J.

FALSHAW, J.— I agree.

CIVIL REFERENCE

Before Falshaw and Bishan Narain, JJ.

THE COMMISSIONER OF INCOME-TAX, DELHI, AJMER, RAJASTHAN, AND MADHYA BHARAT, DELHI,— *Petitioner*

versus

M/s CHUNI LAL MONGA RAM, DELHI,—*Respondent.*

(I.T. Case) Civil Reference No. 13 of 1955.

1957

Jan., 23rd

Indian Income-tax Act (XI of 1922)—Sections 10(1), 14(2) and 24(1),—Business carried in Britsh India—Loss

incurred in an Indian State—Right of the assessee to set-off the loss.

Excess profits Tax Act (XV of 1940)—Section 5—Proviso III—Losses incurred in an Indian State or Part B State—Whether can be taken into account in assessing the taxable income of an assessee in British India for the purpose of assessing excess profits tax or business profits tax.

Held, that losses incurred by an assessee in British India on business transacted in Indian State could be taken into account in assessing his income from business. The claim of losses is governed by provisions of section 10(1) of the Income-tax Act and not by section 24(1) proviso read with Section 14(2)(c) nor by the provision of Section 42.

Held further, that inspite of the slightly different language of the Excess Profits Tax Act from that of the Income-Tax Act, no distinction has ever been drawn in this matter between the principle governing assessment to income-tax and to excess profits tax. Whereas for the excess profits tax, profits earned in an Indian State could not be taken into consideration at all, such profits could be taken into account if brought into taxable territories for assessing business profits tax and that as regards losses, they could always be taken into account in assessing the income from business whether accrued in a State or in what was British India.

Commissioner of Income-tax, Delhi v. *Gajja Nand Gobind Ram* (1), *Commissioner of Income-tax, Punjab* v. *Hira Mal Narain Das* (2), *Commissioner of Income-tax, Punjab* v. *Partap Singh* (3), *Karam Chand Prem Chand Ltd.* v. *Commissioner of Income-tax, Bombay North, etc.* (4), relied upon, *Mishri Mal Gulab Chand* v. *Commissioner of Income-tax* (5), not followed.

A. N. KIRPAL, for Petitioner.

K. R. BAJAJ, PARDAMAN LAL and J. L. BHATIA, for Respondent.

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(1) 28 I.T.R. 499.
(2) 24 I.T.R. 199.
(3) 28 I.T.R. 117.
(4) 30 I.T.R. 849.
(5) 18 I.T.R. 75.

JUDGMENT.

Falshaw, J.

FALSHAW, J.—On an application under section 66(2) of the Income-tax Act by the Commissioner of Income-tax my Lord the Chief Justice and I required the Income-tax Appellate Tribunal to state the case and refer the following two questions to this Court:—

> "(1) Whether the claim of loss in this case is governed by the provisions of section 10(1) or 24(1) proviso read with section 14(2) (c) or by the provisions of section 42?
>
> (2) Whether on the facts of the case a loss of Rs. 22,981 is allowable in computing the income of the assessee chargeable to the excess profits tax?

The case arises out of the assessment of the respondent firm Messrs Chuni Lal-Monga Ram for the year, 1946-47 to income-tax, and to excess profits-tax for the period ending 6th February, 1946. The assessee firm carries on a a speculation business at Delhi. Forward transactions are entered in various bullion markets, and on certain transactions entered into with firms at Bhatinda in the then State of Patiala. losses of Rs. 6,366 and Rs. 16,615 were incurred. The question arose whether in view of the fact that according to the provisions of section 14(2)(c) of the Income-tax Act, as it then stood, any profits resulting to the assessee from business in an Indian State would be excluded in assessing the taxable income of the assessee unless such profits were brought into British India, and the assessee was entitled to deduct the losses incurred on business in a native State ? The Appeallate Tribunal held that there was no warrant either in terms of section 13(2)(c) or in terms of the proviso to section 24(1) to split up the transactions of a business located in the taxable territories into transactions

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in taxable territories and transactions without taxable territories and that nothing in the provisions of section 14(2) (c) or the proviso to section 24(1) debarred the taking into account of the lossess incurred in this way by the assessee firm. The assessee's appeal was accordingly allowed and the losses deducted from the assessee's taxable income.

When the application was made under section 66(2) by the Commissioner of Income-tax he not only raised this point but also raised the question of these losses in connection with the assessment for excess profits in spite of the fact that this matter had never been separately raised or considered at any stage, the orders passed regarding the excess profits being consequential on the orders of the Income-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal. At the time when the application was heard it was agreed that the first matter arose, but the assessee objected to the framing of the second question. His objections on this point were, however, overruled.

It appears that the point raised in the first question is virtually settled law, since it is admitted that the only High Court in India which now takes the view that losses incurred by an assessee in British India on business transacted in an Indian State could not be taken into account in assessing his income from business by virtue of the provisions of the Income-tax Act, relied on by the Commissioner, is the Allahabad Court, and the other Courts, including our own, have taken the contrary view. The latest decision of this Court by my lord the Chief Justice and myself on this point is in *Commissioner of Income-tax, Delhi* v. *Gajja Nand-Gobind Ram* (1), in which we followed the two earlier decisions of this Court in *Commissioner of Income-tax, Punjab* v. *Hira Mal-Narain Dass* (2), and

(1) 28 I.T.R. 499.
(2) 24 I.T.R. 199.

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in *Commissioner of Income-tax, Punjab* v. *Partap Singh* (1). In the earlier of these decisions Kapur, J., and I expressly dissented from the view of the Allahabad High Court in *Mishri Mal-Gulabchand* v. *Commissioner of Income-tax* (2). The answer to the first question must accordingly be that the claim of losses in this case is governed by the provisions of section 10(1) of the Income-tax Act and not by the sections relied on by the Commissioner.

The second question, however, raises a more difficult point in view of the fact that the provisions of the Excess Profits Tax Act of 1940 (now defunct) were not identical with those of the Income-tax Act. Section 5 of this Act during the relevant period read—

> "This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of subsection (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that subsection;
>
> Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India;
>
> Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed under the

(1) 28 I.T.R. 117.
(2) 13 I.T.R. 75.

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Indian Income-tax Act, 1922, so to accrue or arise, then except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business:

Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision be deemed to be a separate business the whole of the profits of which accrue or arise in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business."

On behalf of the Commissioner reliance is placed on the third of these provisos, the meaning of which, it is contended, is that any business done in a native State is to be treated, for the purpose of assessment to excess profits tax, as a separate business, and that neither profits nor losses resulting from such business are to be taken into consideration in the assessment of the assessee in British India.

Reliance is also placed on the fact that in the Act which has more or less taken the place of the Excess Profits Tax Act, the Business Profits Tax Act, 21 of 1947, section 5 which relates to the application of the Act is in more or less similar terms to section 5 of the Excess Profits Tax Act, except that before the third proviso a new proviso has been substituted which reads—

"Provided further, that this Act shall not apply to any income, profits or gains of business

accruing or arising within a Part B State unless such income, profits, or gains are received or deemed under the provisions of the aforesaid Act to be received in or are brought into the taxable territories in any chargeable accounting period, or are assessable under section 42 of that Act."

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It is, however, clear that neither the old nor the new proviso mentions losses, and it would appear to me that the only real difference is that whereas under the Excess Profits Tax Act profits made on business in an Indian State were on no account to be taken into consideration in the assessment of excess profits tax in British India, whether such profits were allowed to remain where they were or were brought by the assessee into British India, the proviso in the Business Profits Tax Act has been amended so as to incorporate the principle of section 14(2)(c) of the Income-tax Act, so as to make profits accruing from business in a Part B State assessable to the tax in the taxable territories if brought there in any chargeable accounting period, or if deemed to have been brought there under any provision of the Income-tax Act. It does not seem to me that either of the provisos touches the question whether losses incurred in an Indian State or Part B State could be taken into account in assessing the taxable income of an assessee in British India or the so-called taxable territories for the purpose of assessing excess profits tax or business profits tax, as the case may be.

This very question has, however, arisen in a case before the Bombay High Court in connection with the Business Profits Tax Act, In *Karamchand-Premchand, Limited* v. *Commissioner of Income-tax, Bombay North, etc.*, (1), and it has been held by Chagla, C.J., and Tendolkar, J.,

(1) 30 I.T.R. 849.

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that an assessee is entitled under the third proviso to section 5 of the Business Profits Tax Act, 1947, to deduct the losses incurred by him in a Part B State and set them off against the profits made by him in the taxable territories, even though the income, profits or gains made by him in such State are not assessable to tax unless they are received in or are brought into the taxable territories. In other words, the decision on this matter has been on the same lines as the decisions of the Bombay and other High Courts on the provisions of the Income-tax Act and on the effect in a matter of this kind of section 14(2) (c).

It would seem that in spite of the slightly different language of the Excess Profits Tax Act, from that of the Income-tax Act, no distinction has ever been drawn in this matter between the principles governing assessment to income-tax and the principles governing assessment to excess profits tax, and in fact it would appear to have been the universal practice that decisions of the Income-tax authorities and High Courts have been followed by consequential orders relating to the same assessee's taxable income for the purpose of the Excess Profits Tax Act, and the learned counsel for the Commissioner has not been able to cite any decision in which different principles have been applied on this particular matter. Admittedly, one of the reasons given in his judgment by Chagla, CJ., for coming to the decision mentioned above was that the third proviso had been changed in the Business Profits Tax Act, as compared with the Excess Profits Tax Act, but this is only one of the number of reasons, and the question has not been considered at all whether under the proviso in the Excess Profits Tax Act losses made in an Indian State could have been computed in assessing the assessee's income from business in British India. I can only say that in the circumstances it seems to me likely that if

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the point had arisen the same view that I have expressed above would have been taken, namely that whereas for the excess profits tax profits earned in an Indian State could not be taken into consideration at all, such profits could be taken into account if brought into taxable territories for assessing business profits tax, and that as regards losses they could be taken into account in assessing the income from business whether they occured in a State or in what was British-India.

Apart from this, it was argued on behalf of the assessee, and to my mind with some force, that it is doubtful in a case of this kind whether the losses could be deemed to have been incurred in an Indian State, since it is not in dispute that the only place where the assessee carries on business is Delhi, and that its transactions in other markets are carried out by means of communication by telephone or post. There is no suggestion that the firm has any agent or branch in any native State, and it, therefore, seems to me that, whether profits result or losses are incurred as the result of transactions of this kind even with firms in Indian States, the profits accrue or the losses are incurred at the place where the payments are received, or from which they are made, namely the firm's place of business at Delhi. It was the case of a similar firm with which my Lord the Chief Justice and I were dealing in the *Commissioner of Income-tax, Delhi* v. *Gajja Nand-Gobind Ram* (1), and we held that in such circumstances no question arose of the application of section 14(2)(c) of the Income-tax Act. The result is that I would answer the second of the questions framed in the affirmative. The Commissioner is directed to pay the costs of the assessee respondent. Counsel's fee Rs. 250.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

(1) 2? I.T.R. 499.