

STANDARD REFINERY & DISTILLERY LTD.

v.

COMMISSIONER OF INCOME-TAX, CALCUTTA

January 18, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

Income-tax Act (11 of 1922), s. 22(4)—'Same business', tests for.

The assessee owned a distillery and a refinery. In 1945, it obtained on lease the sugar factory belonging to another company, and during the period from January to April 1946, it purchased about 41,000 shares of the lessor company, and in April 1947, sold the entire block of shares. The transaction resulted in a loss. After setting off the loss against the other income for the assessment year 1948-49, the unabsorbed loss was carried forward under s. 24(2) of the Income-tax Act, 1922, to the assessment year 1949-50. But the assessee's claim to set off the loss pertaining to the share business against the profits in the sugar business was negatived by the Department, the Appellate Tribunal and the High Court.

In appeal to this Court, this Court reframed the question referred to the High Court as 'whether the business of dealing in shares and the business of manufacturing sugar etc. constituted the same business within the meaning of s. 24(2) of the Act,' and directed the Tribunal to submit a supplementary statement of case. The Tribunal submitted that the two businesses had a single trading and profit and loss account, that they had been dealt with by a common organisation, that the transaction relating to shares was treated as part and parcel of the business of the assessee company, that a common fund was utilized for both businesses and that they were carried on in the same place of business.

HELD: In determining whether two lines of business constitute the 'came business' within the meaning of s. 24(2), the income-tax authorities must consider the inter-connection, inter-lacing inter-dependence and unity furnished by the existence of common management, common business organisation, common administration, common fund and a common place of business. Applying those tests the share transaction as well as the other business of the assessee should be considered as the 'same business.'

[380 F-G]

C.I.T., Madras v. Prithvi Insurance Co. Ltd., 63 I.T.R. 632, S.C. and *Procedure Exchange Corpn. Ltd. v. C.I.T. Central Calcutta*, 77 I.T.R. 739 S.C. followed.

Satabganj Sugar Mills Ltd. v. C.I.T., Central Calcutta, 41 I.T.R., 72 S.C. and *Scales v. George Thompson & Co. Ltd.*, 13 Tax Cas. 83, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1585 of 1968.

Appeal from the judgment and order dated July 23, 1963 of the Calcutta High Court in Income-tax Reference No. 64 of 1958.

S. C. Manchanda, Gobind Das and D. N. Gupta, for the appellant.

S. Mitra, S. K. Aiyar and R. N. Sachthey, for the respondent.

A The Judgment of the Court was delivered by

B **Hegde, J.** This is an assessee's appeal. The assessee is a public limited company and the appeal relates to the assessment for the assessment year 1949-1950, corresponding to the accounting year which is the calendar year ending on December 31, 1948. The assessee company was incorporated in 1942. At the beginning it owned a distillery at Unnao. It acquired a refinery in 1943. With effect from June 1, 1945, the assessee company obtained on lease the New Sawan Sugar and Gur Refining Co. During the period from January 29, 1946 to April 23, 1946, the assessee company purchased 41,300 shares of the said company for Rs. 12,17,006/-. On April 30, 1947 the entire block of shares was sold to Produce Exchange Corporation Ltd. for Rs. 8,46,750/-. The transaction resulted in a loss of Rs. 3,70,356/-. This loss was treated by the assessee as a trading loss for the assessment year 1948-49. After setting off this loss against the other income of the assessee company, a loss of Rs. 2,27,085/- was carried forward under s. 24(2) of the Income-tax Act, 1922 (to be hereinafter referred to as the Act) to the year 1949-50 and later years. The assessee claimed to set off this unabsorbed loss pertaining to the share business against its profits in the sugar business for the assessment year 1949-1950. The Income-tax Officer did not permit this set off. The Appellate Assistant Commissioner confirmed the order of the Income-tax Officer. In a further appeal, the Appellate Tribunal agreed with the conclusion reached by the Income-tax Officer. Thereafter at the instance of the High Court, the Appellate Tribunal stated a case under s. 66(2) of the Act on the following question of law :

F "Was there any evidence before the Tribunal on which it could hold that the business in dealing with shares was distinct and separate from the business of sugar manufacturing and distillery?"

G By its judgment dated April 23, 1963, the High Court answered the question in the affirmative and against the assessee. This appeal has been brought against the decision of the High Court after obtaining a certificate under s. 66(A)(2) of the Act.

The appeal came up for hearing before this Court on February 6, 1969. After hearing the Counsel for the parties this Court observed :

H In the present case however it is not possible for us to satisfactorily dispose of this appeal because the statement of the case submitted by the Tribunal is incomplete and has omitted to state material facts bearing upon the question referred. For instance, it is not clear as to

whether the assessee adduced any evidence as to why it started purchasing the shares of the lessor company about six months after the commencement of the lease. It is also not stated by the Tribunal whether there is any evidence of inter-relation between the purchase of shares and the manufacture of sugar.”

A

In view of that conclusion this Court directed the Tribunal to submit a supplementary statement of case on some of the points formulated in the order.

B

The Tribunal accordingly submitted a supplementary statement of case. Even after considering that supplementary statement, this Court found itself unable to record its opinion on the question referred to. This Court was also of the opinion that the question which the Tribunal was directed to and did refer was defective and restricted the scope of the enquiry. It accordingly reframed the question as follows :

C

“Whether the business of the company of dealing in shares and the business of manufacturing sugar and other commodities constitute the same business within the meaning of s. 24(2) of the Indian Income-tax Act, 1922, in force in the year of assessment?”

D

It further directed the attention of the Tribunal to the decision of this Court in *Commissioner of Income-tax, Madras v. Prithvi Insurance Co. Ltd.*⁽¹⁾ in order to assist the Tribunal to find out the relevant points for consideration. In the order calling for a further supplementary statement, this Court observed :

E

“As pointed out by this Court in *Commissioner of Income Tax, Madras v. Prithvi Ins. Co. Ltd.* in determining whether two lines of business constitute the same business within the meaning of s. 24(2) of the Income-tax Act, the income-tax authorities must consider the inter-connection, inter-lacing, inter-dependence and unity furnished by the existence of common management, common business organisation, common administration, common fund and a common place of business.”

F

The Tribunal has now submitted the second supplementary statement of case called for by this Court. The facts found by it are as follows :

G

- (1). There is a single trading and profit and loss account. In the same account the sales of spirit, sugar and molasses as well as stock and shares appear;

H

- A** (2) The share transactions as well as the business has been dealt with by a common organisation, though the sale of shares is a single transaction and the purchase of those shares is also more or less of the same character;
- B** (3) The business of the company as well as the transaction relating to the shares were attended to as part and parcel of the business of the assessee company;
- (4) A common fund was utilised both for business purposes as well as for the purchase of shares. A part of the over-draft of Rs. 6,80,046/- taken from the bank on December 31, 1947 has been discharged from out of the income of the business; and
- C** (5) the share transaction work as well as the other business of the assessee company were carried on in the same place of business.

D From the facts found by the Tribunal, it is clear that the share transaction as well as the other businesses of the company were dealt with by a common management, common business organization, common administration, common fund and common place of business.

E It was urged by Mr. Mitra, learned Counsel for the Revenue that from the facts found by the Tribunal, it is not possible to conclude that there was any inter-connection, inter-lacing, inter-dependence and unity between the transactions of the assessee company relating to the shares as well as its other business and therefore the two activities cannot be considered as "the same business". He contended that this Court in *Prithvi Insurance Co. Ltd's case*⁽¹⁾ has accepted the correctness of the decision of the King's Bench in *Scales v. George Thompson, Co., Ltd.*⁽²⁾ and in that case Rowlatt J. had held that before two or more businesses can be considered as "the same business" they should not be easily separable and there must be a dovetailing of the one with the other. According to Mr. Mitra the transactions relating to the shares could have been easily separated from the other business of the company and therefore there is no inter-connection; equally there is no inter-lacing because the share transaction business does not dovetail itself into the other business of the assessee company. Further there is neither inter-dependence or unity between the two businesses. The concepts of inter-connection and inter-lacing, inter-dependence and unity are not free of ambiguity. But

G this Court has laid down certain objective tests for finding out

H

(1) 63 I.T.R. 632.

(2) 13 Tax Cases 83.

A
the existence of inter-connection, inter-lacing inter-dependence
and unity between two or more businesses. In *Commissioner of
Income-tax, Madras v. Prithvi Insurance Co. Ltd.*(¹), this Court
ruled that inter-connection, inter-lacing, inter-dependence and
unity were furnished by the existence of common management,
common business organisation, common administration, common
fund and a common place of business. This conclusion was re- B
iterated by this very bench in *Produce Exchange Corporation Ltd.
v. Commissioner of Income-tax, (Central Calcutta)*(²). Therein
the assessee company carried on business as a dealer in diverse
commodities and also stock and shares. In the year of account
1949, it had suffered loss of Rs. 3,71,700/- in the sale of shares
which the company claimed to carry forward and set off against C
the profits of subsequent years from transactions in other com-
modities. The Tribunal found that there was complete unity of
control and shares were one of a number of commodities in which
the company dealt in the ordinary course of business and that
there was no element of diversity or distinction or separateness
about the transaction in shares, and accordingly upheld the claim. D
On a reference the High Court held that the essential matter to
be considered was the nature of the two lines of business and not
merely their unity of control and that therefore the Tribunal erred
in holding that the whole trading activity formed one business.
Reversing the decision of the High Court this Court ruled that the
decisive test was unity of control and not the nature of the two
lines of business. E

For the reasons mentioned above we allow this appeal, dis-
charge the answer given by the High Court and answer the re-
framed question in the affirmative and in favour of the assessee.
The Revenue shall pay the costs of the assessee both in this Court
and in the High Court. F

V.P.S.

Appeal allowed.

(1) 63 I.T.R. 632.

(2) 77 I.T.R. 739.