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The Ahmedabad Textile Industry's Research Association v. The State of Bombay & Others

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business and trade organised with the object of discovering ways and means by which the member-mills may obtain larger profits in connection with their industries. In these circumstances we have no hesitation in coming to the conclusion that the appellant-association is carrying on an activity which clearly comes within the definition of the word "industry" in s. 2(j) and which cannot be assimilated to a purely educational institution. In this view of the matter, when a dispute arose between the appellant and some of its employees, it was an industrial dispute and could be properly referred for adjudication under the Act.

The appeal fails and is hereby dismissed with one set of costs.

Appeal dismissed.

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November 17.

SETABGUNJ SUGAR MILLS LTD.

v.

THE COMMISSIONER OF INCOME-TAX, CENTRAL, CALCUTTA.

J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.

Income Tax—Company having several activities—Set-off of loss in one, when can be claimed against profits in another—Whether activities constitute one business or separate businesses—Mixed question of law and fact—Indian Income Tax Act, 1922, (11 of 1922) ss. 24(2), 66(2).

The appellant company which had different ventures claimed to set off against the profits of one venture the losses of its other venture which were brought forward from the back years, contending that the losses were of the same business and s. 24(2) of the Indian Income-tax Act applied. The tribunal rejected the appellants contention and gave reasons why the various activities of the company could not be construed as the same business for the application of s. 24(2).

The company then asked the Tribunal to make a reference to the High Court on questions of law arising out of Tribunal's order. The Tribunal declined to make a reference. The company moved the High Court of Calcutta, under s. 66(2) of

Income-tax Act, for calling upon the Tribunal to state a case but the application was summarily dismissed. The company appealed to the Supreme Court, by special leave, against the decision of the Income-tax Appellate Tribunal and also the order of the Calcutta High Court.

Held, that the question whether different ventures carried on by an individual or a company form one business is a mixed question of law and facts. The principle is to find out whether there is any interconnection, any interlacing, any interdependence, any unity at all, embracing the ventures as laid down in *Scales* v. *George Thompson & Co. Ltd.* These principles have to be applied to the facts before a legal inference can be drawn that a particular business is composed of separate businesses and not one business. The ultimate conclusion is a legal inference from facts proved and is one of mixed law and fact on which application of s. 24(2) of the Act depends.

In the instant case a question of law did arise on which the High Court should have asked for a statement of the case. The question of law is "whether on the facts and circumstances of the case, the business activities of the company, to wit, manufacture and sale of sugar and sale and purchase of gunnies, jute, mustard seeds, constituted the same business within the meaning of s. 24(2) of the Indian Income-tax Act, 1922".

The High Court is directed to call for a statement of the case from the Tribunal and dispose of it according to law.

Scales v. *George Thompson & Co. Ltd.*, (1927) 13 T. C. 83, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 143 of 1958.

Appeal by Special Leave from the Judgment and Order dated the 15th March, 1955, of the Income-tax Appellate Tribunal of India, Calcutta in I. T. A. No. 4309 of 1954.

Civil Appeal No. 144 of 1958.

Appeal by Special Leave from the Judgment and Order dated the 27th April, 1956, of the Calcutta High Court in Income-tax Matter No. 9 of 1956.

N. A. Palkhivala (In both the Appeals) and *B. P. Maheshwari* for the Appellants.

K. N. Rajagopal Sastri and *D. Gupta* for the Respondent.

1960. November 17. The Judgment of the Court was delivered by

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Setabgunj Sugar Mills Ltd. v. The Commissioner of Income-tax, Central, Calcutta.

Hidayatullah J.

HIDAYATULLAH, J.—These are two consolidated appeals by special leave. The first is directed against an order of the Income-tax Appellate Tribunal, Calcutta Bench dated March 15, 1955, and the other, against an order of the Calcutta High Court dated April 27, 1956, declining to ask for a statement of the case under s. 66(2) of the Indian Income-tax Act.

The facts are as follows: Setabgunj Sugar Mills, Ltd., is the appellant. This Company was incorporated in 1934, and was established to take over some sugar mills run by a firm. Included in the objects for which the Company was established was the business of buyers, sellers and dealers in jute, gunnies, oil seeds, etc. For the first few years, the Company carried on the business of manufacture and sale of sugar only. In the accounting year ending August 31, 1945, the Company had some transactions in gunnies and made a profit. In the next accounting year ending August 31, 1946, the Company made also a profit in transactions in gunnies and jute. In the accounting year ending August 31, 1947, (corresponding assessment year being 1948-49), the Company did business in mustard seeds, gunnies and hessian and made profit. After this assessment year, the Company ceased to have any business other than the manufacture and sale of sugar.

We are concerned with the assessment year 1948-49, corresponding to the accounting year ending August 31, 1947. In that year, the profits from the sale of gunnies, mustard and jute amounted to Rs. 6,14,018. Some of the business was done by purchases or sales in the territory now in Pakistan. During the same accounting year, the sugar business resulted in a loss of Rs. 2,09,306. The loss in sugar business was set off against the profits of the other businesses, and the Income-tax Officer by his order assessed the Company on an income of Rs. 4,04,712. The Company claimed to set off against this profit, business losses of back years in its business in sugar amounting to Rs. 13,43,069, which had been brought forward from the previous year. The contention of the Company was that these losses were of the same business, and

that s. 24(2) of the Indian Income-tax Act applied. This contention was not accepted. On appeal to the Appellate Assistant Commissioner, the contention of the Company was accepted. The Commissioner of Income-tax then preferred an appeal before the Income-tax Appellate Tribunal (Calcutta Bench), which was allowed. The Tribunal gave reasons why the various activities of the Company could not be construed as the same business for the application of s. 24(2).

The Company then asked the Tribunal to make a reference to the High Court on four questions of law which, it stated, arose out of the Tribunal's order. The Tribunal declined to make a reference. The Company next moved the High Court under s. 66(2) of the Act for calling upon the Tribunal to state a case on the four questions, but its application was summarily dismissed. The Company has now, with special leave, appealed against the order of the Tribunal reversing the decision of the Appellate Assistant Commissioner and also against the order of the High Court declining to call for a statement of the case.

The question whether, on the application of the settled tests, different ventures carried on by an individual or a company form the same business is a mixed question of law and fact. Certain principles are applied to determine whether on the facts found a legal inference can be drawn that the different ventures constitute separate businesses or viewed together, can be said to constitute the same business. These principles were stated by Rowlatt, J. in *Scales* v. *George Thompson & Co. Ltd.* (1). The learned Judge observed:

".....the real question is, was there any interconnection, any interlacing, any inter-dependence, any unity at all embracing those two businesses."

The learned Judge also observed that what one had to see was whether the different ventures were so interlaced and so dovetailed into each other as to make them the same business. These principles have to be applied to the facts, before a legal inference can be drawn that a particular business is composed of

(1) (1927) 13 T.C. 83, 89.

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separate businesses, and is not one business. No doubt, findings of fact are involved, because a variety of matters bearing on the unity of the business have to be investigated, such as unity of control and management, conduct of the business through the same agency, the inter-relation of the businesses, the employment of same capital, the maintenance of common books of account, employment of same staff to run the business, the nature of the different transactions, the possibility of one being closed without affecting the texture of the other and so forth. When, however, the true facts have been determined, the ultimate conclusion is a legal inference from proved facts, and it is one of mixed law and fact, on which depends the application of s. 24(2) of the Act. In our opinion, a question of law did arise in the case, on which the High Court should have asked for a statement of the case. That question of law is:

"Whether on the facts and circumstances of the case, the business activities of the Company to wit, manufacture and sale of sugar and sale and purchase of gunnies, jute, mustard seeds constituted the same business within the meaning of s. 24(2) of the Indian Income-tax Act, 1922?"

We accordingly allow Civil Appeal No. 144 of 1958, with costs, and direct the High Court to call for a statement of the case from the Tribunal on this question, and dispose of it, according to law.

As regards Civil Appeal No. 143 of 1958, which questions the order of the Tribunal, we express no opinion, though we may state that the learned counsel for the Department attempted to show that the order of the Tribunal in the circumstances of the case was correct, and that no other decision but the one given by the Tribunal was possible. In view of the fact that the Appellate Assistant Commissioner had drawn an inference contrary to that of the Tribunal, it cannot be said that the legal inference was one and one alone. We, however, express no opinion either way, because we are satisfied that a question of law did arise in the case, and have, therefore, allowed the other appeal, so that the matter may be examined by

the High Court in the first instance, on a statement of the case by the Tribunal.

Civil Appeal No. 143 of 1958, will, therefore, be dismissed, but without any order as to costs.

C. A. No. 144 of 1958 allowed.

C. A. No. 143 of 1958 dismissed.

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THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, BOMBAY

v.

BIPINCHANDRA MAGANLAL AND CO. LTD., BOMBAY

S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.

Income-tax—Profit and assessable income—Difference between —Smallness of profit—How determined—Indian Income-tax Act, 1922 (11 of 1922), ss. 10 (2) (vii) second proviso, 66(1).

The respondent company purchased certain machinery for Rs. 89,000 and sold it for the same value, but in the books of account the written down value of the machinery was shown in the year of account as Rs. 73,392. The Income Tax Officer in computing the assessable income of the company added the difference, i.e. Rs. 15,608, between the actual value and the written down value to the profit of the company. The Income Tax Officer also passed an order under s. 23A of the Income Tax Act, and directed that the undistributed portion of the assessable income, shall be deemed to have been distributed amongst the shareholders as dividend. Appeals against the order of the Income-tax Officer proved unsuccessful and the Appellate Tribunal referred the following question to the High Court under s. 66(1):—

"Whether the sum of Rs. 15,608 should have been included in the assessee company's "profit" for the purpose of determining whether the payment of a larger dividend than that declared by it would be unreasonable."

The High Court answered the question in the negative. On appeal by special leave,

Held, that the view taken by the High Court was correct.