A

BROOKE BOND & COMPANY LTD. (NOW KNOWN AS BROOKE BOND LEIBIG LIMITED)

v.

B C.I.T., WEST BENGAL-II, CALCUTTA

SEPTEMBER 30, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

C *Indian Income Tax Act, 1922—Sections 6, 24(2) & 33A—Assessee—Dividend income shown in return under head 'income from other sources'—Whether could be computed under head 'income from business'.*

The appellant, a sterling company carrying on business in tea D **with its Head Office in the United Kingdom, invested in the shares of other tea companies in different parts of the world, and had a hundred per cent share holding in an Indian subsidiary.**

The appellant was assessed under the Indian Income Tax Act 1922. For the assessment year 1955-56 the appellant was assessed on its E **total world income on the basis of provisional figures of its business loss including depreciation, and its income from individuals. As its Indian income exceeded its income outside India it was assessed as a resident. Meanwhile the appellant had already been assessed for the subsequent assessment year 1956-57 in the status of a 'non-resident' and its income from dividends was assessed under the head 'Income from Other** F **Sources'. The loss determined for the assessment year 1955-56 could not be carried forward and set off against the income for the assessment year 1956-57, as the latter assessment was made subsequent to the former.**

The appellant preferred two revision applications, one each for G **the assessment years 1955-56 and 1956-57 under sub-s. (2) of s. 33A. In the revision application for the assessment year 1955-56, the appellant claimed that the quantum of loss determined for that year having been based on provisional figures should be revised on the basis of final figures certified by an Inspector of Taxes in the United Kingdom, that the loss should be ascertained for the purpose of carrying it forward,** H **and that the loss should be bifurcated between an unabsorbed deprecia-**

tion and other loss. In the revision application for the assessment year 1956-57, the appellant claimed a set off of the loss determined for the assessment year 1955-56 against the income of the assessment year 1956-57 on the ground that the shares held by it in different companies constituted its trading assets and the dividend income accruing therefrom should be regarded as income from accruing therefrom should be regarded as income from business. A B

During the pendency of these revision petitions the assessment for the assessment year 1957-58 was completed as a non-resident, and the income was determined as receipt by way of dividends on its share holdings. C

In the appeal to the Appellate Assistant Commissioner, it was claimed that the loss for the assessment year 1955-56 should be carried forward and set off against the income of the assessment year 1957-58 under sub-s. (2) of s. 24 because both the losses and the income arose from business carried on by the appellant, but the appeal was dismissed holding that there would be no loss if the loss for the assessment year 1955-56 was set off against the income for the assessment year 1956-57 and that the loss could not be legally set off directly in the assessment year 1957-58. D

In further appeal, the Income-Tax Appellate Tribunal set aside the order of the Appellate Assistant Commissioner and directed it to dispose of the appeal afresh after determining whether the appellant was entitled to set off a business loss arising outside the taxable territories for the assessment year 1955-56 against the dividend income arising in the taxable territories for the assessment year 1957-58. The reference to the High Court was declined by the Appellate Tribunal. E F

The revision application pertaining to the assessment year 1955-56 was allowed subject to the claim being verified in regard to the figures and calculation of depreciation by the Income Tax Officer. The revision application pertaining to the assessment year 1956-57, however, was rejected holding that the dividends earned by the appellant from the investments in shares of companies carrying on the tea business could not be said to be a part of the appellant's business because the investments were not incidental to the appellant's business activities and were not held as trading assets, that the companies from which the dividend was earned were not companies of which the appellant was managing agent, that a set off cannot be allowed to the extent of the G H

A unabsorbed depreciation brought forward from the assessment year 1955-56 against the business income derived during the assessment year 1956-57, and that there was no business income in the assessment year 1956-57.

B A Petition under Art. 226 filed by the appellant against the disposal of his revision application for the assessment year 1956-57 was dismissed by a Single Judge, and the appeal against that order as well as dismissed.

In the appeal to this Court on behalf of the appellant it was contended: (1) that if this Court clarified that the Appellate Assistant C Commissioner can proceed in the appeal relating to the assessment year 1957-58 pending before him without being influenced by the observations of the Commissioner of Income Tax and the High Court in the case relating to the assessment year 1956-57 on the aspect of carry forward of loss under sub-s. (2) of s. 24, the appeal would not be pursued, and D that if such clarification is not possible then this Court should confine itself to the case relating to the assessment year 1956-57; (2) that the Commissioner of Income Tax had conceded in an earlier proceeding that the dividend income was income from business; (3) that the loss should be carried forward under sub-s. (2) of s. 24 from the assessment year 1955-56, to the assessment year 1956-57 and it is not necessary that E the business carried on in the assessment year 1956-57 should be the same as that carried on in the assessment year 1955-56, and (4) that the claim of the appellant to carry forward of unabsorbed depreciation under sub-s. (2) of s. 10 should be allowed.

Partly allowing the Appeal,

F

HELD: 1. The order of the Division Bench and of the Single Judge as well as the order of the Commissioner of Income Tax on the revision application for the assessment year 1956-57 are set aside in regard to the claim of the appellant to the carry forward of unabsorbed depreciation and the Commissioner is directed to dispose of the revision application afresh. G As to the rest of the reliefs the appeal is dismissed. [992C-D]

2. Income-tax is a single charge on the total income of an assessee. For the purpose of computation the statute recognises different classes of income which it classifies under different heads of income. For each head of income the statute has provided the mode of comput- H ing the quantum of such income. The mode of computation varies with

the nature of class of such income, for the deductions permissible under the law in computing the income under each head bear a particular relevance to the nature of the income. [988B-C] A

3. The statute operates on the principle that it is the net income under each head which should be considered as a component of the total income. The statute permits specified deductions from the gross receipt in order to compute the net income. The net income under the different heads is then pooled together to constitute the total income. The process of computation at this stage takes in the provisions relating to the carry forward and setting off of losses and of unabsorbed depreciation. On the conclusion of the entire process of assessment what emerges is the figure of taxable income, the quantum of income which is assessed to tax. [988C-E] B C

4. Ordinarily when income pertains to a certain head, the source of such income is peculiar to that head, but it is not unusual that commercial considerations may properly describe the source differently. For instance, a banking concern may hold securities in the course of its business. The securities constitute its trading assets and income from them would in the commercial sense be regarded as business income. However, for the purposes of computation under the income-tax, the income from such securities would be computed not under the head 'Income from Business' but under the head 'Interest on Securities'. [988E-G] D E

5(i) Business income is broken up under different heads only for the purpose of computation of the total income, and that by such break-up the income does not cease to be the income of the business. [988G]

5(ii) Section 6 of the Indian Income Tax Act 1922, which classified the taxable income under different heads made such classification only for the purpose of computation of the net income of the assessee. [989C] F

United Commercial Bank Ltd. v. *Commissioner of Income Tax*, [1957] 32 I.T.R. 688; *Commissioner of Income-tax, Bombay City* v. *Chugandas and Co.*, [1965] 55 I.T.R. 17; *Commissioner of Income-tax, Andhra Pradesh* v. *Cocandada Radhaswami Band Ltd.*, [1965] 57 I.T.R. 306 and *O.RM.M.SP.SV. Firm* v. *Commissioner of Income-tax, Madras*, [1967] 63 I.T.R. 404, 410 followed. G

6. The mere circumstance that the appellant showed the dividend income under the head 'Income from other Sources' in its returns can- H

not in law decide the nature of the dividend income. It must be determined from the evidence whether having regard to the true nature and character of the income it could be described as income from busi ness, even though it is liable to fall for computation under another head. [989F-G]

7. In the instant case, the appellant placed material before the Commissioner of Income-tax showing that it held shares in companies carrying on the tea business, and that in India it enjoyed a hundred per cent share holding in the Indian subsidiary. But in order that the share holdings in tea companies should be regarded as the business assets of the appellant there must be material evidence indicating that the ownership of the share-holdings is necessarily incidental to the business of tea carried on by the appellant or that the share holdings are held as business assets. [989H; 990A-B]

8. From the material placed before the Court, the Revenue cannot be said to have admitted that the dividend income received by the appellant from its share holdings in other companies can be regarded as part of the appellant's income from business. [990F-G]

9. The loss cannot be carried forward under sub-s. (2) of s. 24 from the assessment year 1955-56 to the assessment year 1956-57 because the shares held by the appellant cannot be regarded as its trading assets. [991A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2020 (NT) of 1974

From the Judgment and Order dated 14.8.1973 of the Calcutta High Court in Appeal No. 317 of 1970

T.A. Ramachandran, J. Ramamurthi and D.N. Gupta for the Appellant.

C.M. Lodha and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J. This appeal by certificate granted by the High Court of Calcutta is directed against a judgment of the Division Bench of the High Court confirming on appeal the dismissal of the appellant's writ petition.

The appellant, Brooke Bond & Company Ltd., now known as Brooke Bond Leibig Limited, is a sterling company carrying on business in tea with its Head Office in the United Kingdom. The appellant has invested in the shares of other tea companies in different parts of the world, and has a hundred per cent share holding in an Indian subsidiary, Brooke Bond (India) Limited.

The appellant is assessed under the Indian Income Tax Act, and the relevant financial year is the previous year in relation to the corresponding assessment year. For the assessment year 1955-56 the appellant was assessed on its total world income by an assessment order dated July 16, 1957 on the basis of provisional figures of its business loss including depreciation, and its income from dividends. On the basis of those provisional figures it was assessed to a net loss of Rs.31,33,647. As its Indian income exceeded its income outside India it was assessed as a resident. Meanwhile, on March 28, 1957 the appellant had already been assessed for the subsequent assessment year 1956-57 in the status of a non-resident, and its income of Rs.53,11,958 from dividends was assessed under the head 'Income from Other Sources'. It is obvious that the loss determined for the assessment year 1955-56 could not be carried forward and set off against the income for the assessment year 1956-57, as the latter assessment was made subsequent to the former.

On February 12, 1958 the appellant preferred two revisions applications, one each for the assessment years 1955-56 and 1956-57, before the Commissioner of Income-tax under sub-s. (2) of s. 33A of the Indian Income Tax Act, 1922. In the revision application for the assessment year 1955-56 the appellant claimed that the quantum of loss determined for that year having been based on provisional figures should now be revised on the basis of the final figures certified by an Inspector of Taxes in the United Kingdom. The appellant claimed also that the loss should be ascertained for the purpose of carrying it forward, and further that the loss should be bifurcated between an unabsorbed depreciation of Rs.40,27,853 and other loss. In the revision application for the assessment year 1956-57 the appellant claimed a set off of the loss determined for the assessment year 1955-56 against the income of the assessment year 1956-57 on the ground that the shares held by it in tea companies constituted its trading assets and the dividend income accruing therefrom should be regarded as income from business. It mentioned that it carried on business in tea in the United Kingdom and the investments were made in the usual course of

its tea business in companies also engaged in the tea business exclusively. The revision petitions remained pending for eight years.

Meanwhile the appellant's assessment for the assessment year 1957-58 was completed in November 1957 as a non-resident, determining an income of Rs.51,85,836 received by way of dividends on its share holdings. An appeal was taken to the Appellate Assistant Commissioner of Income Tax claiming that the loss for the assessment year 1955-56 should be carried forward and set off against the income for the assessment year 1957-58 under sub-s. (2) of s. 24 because both the loss and the income arose from business carried on by the appellant. By his order dated August 14, 1958 the Appellant Assistant Commissioner dismissed the appeal holding that there would be no loss if the loss for the assessment year 1955-56 was set off against the income for the assessment year 1956-57, and that the loss could not be legally set off directly in the assessment year 1957-58. The appellant appealed to the Income-tax Appellate Tribunal and on July 1, 1966 the Appellate Tribunal set aside the order of the Appellate Assistant Commissioner and directed the Appellate Assistant Commissioner to dispose of the appeal afresh after determining whether the appellant was entitled to set off a business loss arising outside the taxable territories for the assessment year 1955-56 against the dividend income arising in the taxable territories for the assessment year 1957-58. The Commissioner of Income Tax applied for a reference to the High Court but the Appellate Tribunal rejected the application on December 1, 1966.

On December 5, 1966 the Commissioner of Income Tax disposed of the revision applications filed by the appellant. The revision application pertaining to the assessment year 1955-56 was allowed subject to the claim being verified in regard to the figures and calculation of depreciation by the Income Tax Officer. The revision application pertaining to the assessment year 1956-57, however, was rejected with the observation that the dividend earned by the appellant from investments in shares of companies carrying on the tea business could not be said to be a part of the appellant's business because the investments were not incidental to the appellant's business activities and were not held as trading assets. It was also stated that the companies from which the dividend was earned were not companies of which the appellant was managing agent so as to require the making of such investments for the purposes of its business as managing agents. The Commissioner also rejected the contention of the appellant that a set off should be allowed to the extent of the unabsorbed depreciation brought forward

from the assessment year 1955-56 against the business income derived during the assessment year 1956-57. The Commissioner observed that there was no business income in the assessment year 1956-57.

Thereafter the appellant filed a writ petition in the High Court of Calcutta against the disposal of his revision application for the assessment year 1956-57, but on September 22, 1969 the learned Single Judge dismissed the writ petition. An appeal filed by the appellant was dismissed by the Division Bench of the High Court on August 14, 1973.

The Division Bench adverted to the finding of the Commissioner of Income Tax in the appellant's revision application relating to the assessment year 1956-57 that the material placed before him did not show that the dividend earned by the appellant from its investment in the shares of different companies could be regarded as part of the appellant's business income. He had found that the investments in shares were not incidental to the appellant's business activities and they were not held as trading assets. The Division Bench held that no error of law in the Commissioner's order had been established and consequently there was no case for interference with the rejection of the appellant's claim for carrying forward the losses arising from its business in the assessment year 1955-56 against the dividend income for the assessment year 1956-57. On the other contention raised by the appellant, the claim to carry forward the depreciation allowance pertaining to the business activities of the assessment year 1955-56 for deduction in the assessment proceedings of the assessment year 1956-57 the Division Bench appeared to be in favour of the appellant, but it declined to express any final opinion on the point. The judgment of the Division Bench is under appeal before us.

At the outset learned counsel for the appellant stated before us that he would not press this appeal if we clarify that the Appellate Assistant Commissioner can proceed in the appeal relating to the assessment year 1957-58 pending before him without being influenced by the observations of the Commissioner of Income Tax and the High Court in the case relating to the assessment year 1956-57 on the aspect of carry forward of loss under sub-s. (2) of s. 24, and that if such clarification is not possible then we should, in this appeal, confine ourselves to the case relating to the assessment year 1956-57.

There was considerable debate on the question whether the

A dividend income received by the appellant from its share holdings in different companies engaged in the tea business could be regarded as business income.

It is a cardinal principle of the law relating to income-tax that inome-tax is a single charge on the total income of an assessee. For the B purpose of computation the statute recognises different classes of income which it classifies under different heads of income. For each head of income the statute has provided the mode of computing the quantum of such income. The mode of computation varies with the nature of the class of such income, for the deductions permissible under the law in computing the income under each head bear a parti- C cular relevance to the nature of the income. The statute operates on the principle that it is the net income under each head which should be considered as a component of the total income. The statute permits specified deductions from the gross receipt in order to compute the net income. The net income under the different heads is then pooled together to constitute the total income. The process of computation at D this stage takes in the provisions relating to the carry forward and setting off of losses and of unabsorbed depreciation. On the conclusion of the entire process of assessment what emerges is the figure of taxable income, the quantum of income which is assessed to tax.

Ordinarily when income pertains to a certain head, the source of E such income is peculiar to that head, but it is not unusual that commercial considerations may properly describe the source differently. For instance, a banking concern may hold securities in the course of its business. The securities constitute its trading assets and income from them would in the commercial sense be regarded as business income. However, for the purposes of computation under the income-tax law F the income from such securities would be computed not under the head 'Income from Business' but under the head 'Interest on Securities'. In *United Commercial Bank Ltd.*, v. *Commissioner of Income tax,* [1957] 32 I.T.R. 688, this Court pointed out that business income was broken up under different heads only for the purpose of computation of the total income, and that by such break-up the income did not G cease to be the income of the business. The principle was followed by this Court in *Commissioner of Income-tax, Bombay City* v. *Chugandas and Co.*, [1965] 55 I.T.R. 17 and it was reiterated that business income was broken up under different heads under the Income Tax Act only for the purpose of computation of the total income, and that by breaking up the income did not cease to be the income of the business. It was H said:

> "The heads described in section 6 and further elaborated for the purpose of computation of income in sections 7 to 10 and 12, 12A, 12AA and 12B are intended merely to indicate the classes of income: the heads do not exhaustively delimit sources from which income arises,"

The point was elaborated by the Court in *Commissioner of Income-tax, Andhra Pradesh* v. *Cocanada Radhaswami Bank Ltd.*, [1965] 57 I.T.R. 306, where the Court was called upon to consider whether the securities owned by the assessee formed part of the trading assets of his business, and income therefrom could be described as income from business, and the Court reaffirmed that s. 6 of the Indian Income Tax Act 1922, which classified the taxable income under different heads made such classification only for the purpose of computation of the net income of the assessee and

> "though for the purpose of computation of the income, interest on securities is separately classified, income by way of interest from securities does not cease to be part of the income from business if the securities are part of the trading assets. Whether a particular income is part of the income from a business falls to be decided not on the basis of the provisions of section 6 but on commercial principles ..... If it was the income of the business, section 24(2) of the Act was immediately attracted. If the income from the securities was the income from its business, the loss could, in terms of that section, be set off against that income."

Accordingly, the mere circumstance that the appellant showed the dividend income under the head 'Income from Other Sources' in its returns cannot in law decide the nature of the dividend income. It must be determined from the evidence whether having regard to the true nature and character of the income it could be described as income from business, even though it is liable to fall for computation under another head. The principle was again applied in *O.RM.M .SP.SV. Firm* v. *Commissioner of Income-tax, Madras* [1967] 63 I.T.R. 404, 410. The position on the law is clear. But is the appellant in the present case entitled to the relief claimed by it?

The appellant placed material before the Commissioner of Income-tax showing that it held shares in companies carrying on the tea business

A and that in India it enjoyed a hundred per cent share holding in the Indian subsidiary. But in order that the share holdings in tea companies should be regarded as the business assets of the appellant there must be material evidence indicating that the ownership of the share-holdings is necessarily incidental to the business of tea carried on by the appellant or that the share holdings are held as business assets. The B Commissioner of Income Tax was unable to draw any conclusion in favour of the appellant in this regard, and the appellant failed to convince the High Court also. We have given our careful consideration to the matter and except for the Indian subsidiary there is nothing to show that the investments of the appellant in the other tea companies were intended to bring, or in fact brought about, some advantage or C benefit to the business carried on by the appellant. The mere fact that the share holdings related to the tea companies is not sufficient by itself to support the submission that they were acquired to safeguard the appellant's interest in the tea business carried on by it. The matter is pending in appeal relating to the assessment year 1957-58 before the D Appellate Assistant Commissioner and it will be open to the appellant to place further material before the Appellate Assistant Commissioner to enable him to come to an adequate and satisfactory decision. The appellant may have a sufficient case specially in regard to the share holding possessed by it in its Indian subsidiary, but we refrain from expressing any opinion on the point and we leave it to the appellant to E satisfy the Appellate Assistant Commissioner that the appellants share holdings in the Indian subsidiary and the other tea-companies enures to the benefit of the business carried on by it.

An attempt was made by learned counsel for the appellant to show that the Commissioner of Income Tax had conceded in an earlier F proceeding that the dividend income was income from business. Our attention has been invited to a recital in the order of the Appellate Tribunal relating to the assessment year 1957-58 and to what has been stated by the Commissioner in his reference application against that order. We are not satisfied from the material placed before us that the Revenue can be said to have admitted that the dividend income re-G ceived by the appellant from its share holdings in other companies can be regarded as part of the appellant's income from business.

Consequently we are unable to sustain the appellant's challenge to the view expressed by the Division Bench of the High Court in regard to the appellant's claim that the dividend income must be H regarded as income from business.

The next point raised by the appellant is that the loss should be carried forward under sub-s. (2) of s. 24 from the assessment year 1955-56 to the assessment year 1956-57 and it is not necessary that the business carried on in the assessment year 1956-57 should be the same as that carried on in the assessment year 1955-56. This point must also fail because it proceeds on the assumption that the shares held by the appellant can be regarded as its trading assets.

The final contention of the appellant relates to the carry forward of unabsorbed depreciation under sub-s. (2) of s. 10. The Division Bench appeared to be of the tentative view that the appellant was entitled to the carry forward claimed by it, but it did not express any final opinion as it had decided to decline relief to the appellant on the ground that the assessment for the assessment year 1956-57 had already been closed by the Revenue when the assessment for the assessment year 1955-56 was being made and the grant of relief would have its consequence on the assessment for the assessment year 1957-58, in respect of which an appeal was pending. The writ petition was directed against the order of the Commissioner of Income Tax made upon the revision application filed by the appellant in respect of the assessment year 1956-57, and the High Court could have directed the Commissioner to grant appropriate relief for the assessment year 1956-57. The Commissioner was not concerned with the proceeding relating to the assessment year 1957-58. That was a matter pending in appeal before the Appellate Assistant Commissioner. The point could have been considered by the Commissioner in the revision application for the assessment year 1956-57. Merely because relief given by the Commissioner in that regard in the proceeding for the assessment year 1956-57 could have its consequence upon the proceeding for the assessment year 1957-58 then pending in appeal before the Assistant Appellate Commissioner, could not bring the case within proviso (b) to sub-s. (1) of s. 33A of the Indian Income Tax Act. It may be that the same point was the subject of the appeal, but the point agitated before the Commissioner was with reference to the assessment year 1957-58. It could not debar the Commissioner from considering the same point in relation to the assessment year 1956-57. We need express no opinion at this stage on the view tentatively expressed by the Division Bench of the High Court that the appellant's claim to the carry forward of unabsorbed depreciation from the assessment year 1955-56 to the assessment year 1956-57 is vaild or not. As we have noted, the view taken by the High Court was tentative only and not its final opinion. Indeed, no submission was made on behalf of the Revenue before us on the point.

A We shall concern ourselves merely with the correctness of the Division Bench refusing to grant relief after it reached the tentative finding that there was merit in the appellant's claim to the carry forward of unabsorbed depreciation. In our opinion, the order of the Commissioner disposing of the revision application for the assessment year 1956-57 should have been set aside by the Division Bench and the Commissioner should have been directed to consider the claim on its merits. We make that direction now. At the same time, we make it clear that it will be open to the Revenue to contend on the merits that the appellant is not entitled to the carry forward of unabsorbed depreciation.

The appeal is allowed in so far only that the order of the Division C Bench and of the learned Single Judge as well as the order of the Commissioner of Income Tax on the revision application for the assessment year 1956-57 are set aside in regard to the claim of the appellant to the carry forward of unabsorbed depreciation, and the Commissioner is directed to dispose of the revision application in respect of that claim afresh. As to the rest of the reliefs the appeal is D dismissed. In the circumstances there is no order as to costs.

A.P.J. Appeal allowed in part.