

INCOME-TAX REFERENCE.

*Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice
Ramesam and Mr. Justice King.*

THE SOUTH INDIAN INDUSTRIALS, LTD., MADRAS,
BY ITS MANAGING DIRECTOR MOHAMED HASHIM SAIT,
PETITIONERS,

1934,
December 12.

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS,
RESPONDENT.*

*Indian Income-tax Act (XI of 1922), ss. 10 (1) and (2) and 24
—Company—Businesses carried on by—Single business or
distinct and separate businesses—Test—Several distinct
businesses owned by company—Loss sustained in some of—
Setting off of, against profits of other businesses—Right of
company—Businesses in former not carried on.*

The assessee company, a limited company registered under the Indian Companies Act, acquired and carried on five separate businesses, one of them being the purchase of shares in a Jute Mills Company. In the year of account the assessee company received a large sum in the shape of dividends from the Jute Mills Company and it claimed to set off against that sum a sum alleged to have been the total loss sustained in the other four concerns. The assessee company had, previous to the year of account, ceased to carry on the business of those concerns; and the sum sought to be set off was made up of interest on moneys borrowed, depreciation on the machinery and buildings, bad debts written off, loss in revaluation of closing stock due to deterioration, and establishment and miscellaneous charges of the various concerns.

Held that the assessee company was not entitled to set off the losses as claimed by it which were of a capital nature against the income from dividends.

A company can cease any one or more of its activities without stopping the others.

* Original Petition No. 128 of 1933.

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Section 10 of the Indian Income-tax Act only deals with businesses which are being carried on and not businesses which have ceased to be carried on.

Several concerns which a company carries on are not necessarily all one business, namely, the company's business. It is a question of fact in each case whether the several businesses carried on by a company are separate businesses or whether they are so interlocked with the main chief business of the company as to be really one business.

Arunachalam Chetty v. Commissioner of Income-tax, (1928) I.L.R. 52 Mad. 296 (S.B.), held to be erroneous in deciding that the piecegoods business of the assessee in that case was only a branch of his banking business and not a separate and distinct business.

PETITION under section 66 (3) of the Indian Income-tax Act, XI of 1922.

K. V. Krishnaswami Iyer, V. Rajagopala Iyer and T. V. Ramiah for assesseses.

M. Patanjali Sastri for Commissioner of Income-tax.

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—The question referred to us is :

“Whether there was sufficient legal evidence to justify the Income-tax Officer's finding that during the year of account the company carried on no business within the meaning of section 2 (4) of the Income-tax Act, XI of 1922, and that the losses claimed by the company were of a capital nature and could not be set off against the income from dividends.”

The assessee company is a limited company registered in 1904 under the Indian Companies Act. The main objects of the company as set out in its Memorandum of Association are (i) to acquire and carry on the business then carried on by the Chittivalsah Spinning and Weaving Company, Limited, at Chittivalsah, (ii) to acquire and carry on the business then carried on by the

Madras Portland Cement and Tile Works, Limited, at Madras and Bangalore and (iii) to acquire and carry on the business then carried on by Messrs. Arbuthnot & Company, Madras, including (a) Cement Works in Calcutta, (b) Rice Mills at Nidamangalam and Tiruvalur and (c) Reliance Foundry at Madras. There is also another object set out in its Memorandum of Association, namely, to take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company. In pursuance of this last-mentioned provision the company purchased a large number of shares in the Chittivalsah Jute Mills Company, Limited, receiving in the shape of dividends during the year of account Rs. 1,40,000. Against that sum the assessee claimed to set off Rs. 1,59,489-1-5 being the total loss alleged to have been sustained on the Vellore Rice Mills, Cement Works, City Brick and Tile Works, Reliance Rice Mills and Reliance Engineering Works and including an amount of Rs. 37,015-0-2 as depreciation. A net loss of Rs. 19,470-15-5 was thus arrived at from which a sum of Rs. 14,482-12-0 was deducted being income-tax on dividends, the loss returned being Rs. 4,988-1-5. In pursuance of its objects the company acquired and carried on various businesses until the year 1923. In that year, the Imperial Bank of India to which the company owed large sums of money applied to the High Court for the winding up of the company and as a result the several businesses were, under the orders of the High Court, taken over and conducted by the

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Official Liquidator till 1925. Then, by consent, the liquidation proceedings were withdrawn and the company tried to resume its activities with an increase of its share capital but apparently without success. From that year onwards, the Income-tax Commissioner finds that the company was existing merely to dispose of its various concerns to their best advantage before closing down finally, and the letters referred to by him clearly support such a finding. It is clear that, with regard to the businesses in respect of which the assessee claimed to set off the respective losses, no trade was done in them since November 1925 except sales of old stock during the year of account amounting to Rs. 260 in the Madras Cement Works and Rs. 1,806 in the City Brick and Tile Works, Bangalore. No purchase was made or anything manufactured during this year. On the contrary, it is admitted that no business whatsoever was carried on except the sale of the old stock already referred to. The loss of Rs. 1,59,489-1-5 was made up of payment of interest on moneys borrowed, depreciation on the machinery and buildings, bad debts written off, loss in revaluation of closing stock due to deterioration and establishment and miscellaneous charges of the various concerns. The company, however, continued to retain its holding of shares in the Chittivalsah Jute Mills Company, Limited, and to that extent the company was undoubtedly carrying on business; and this is not disputed by the Commissioner of Income-tax. What, however, is contested by him is the contention that the assessee is entitled to set off against dividends received from the Chittivalsah Jute Mills

Company, Limited, the loss in the other concerns already referred to, as in his opinion the assessee had ceased to carry on the business of those concerns and had sustained no "loss of profits or gains" which could be set off under section 24 or otherwise against the other income. The assessee both before the Commissioner and before us relied upon the Full Bench decision of this High Court in *Arunachalam Chetty v. Commissioner of Income-tax*(1). There, the trader having two branches in his trade, viz., a cloth business and a banking business, carried on both, each with borrowed capital, and, as the cloth business ended in a loss, he had to close it in 1924 and all that portion of the borrowed capital which was sunk in the cloth business was lost before 1924; and the trader, having had to pay interest on that lost capital in 1924-25, the year of assessment, claimed deduction therefor from the assessable profits of his remaining banking business for the year 1924-25. It was held that, though the branches were distinct, the trade was one and though the lost capital was not available for use in the trade, namely, the banking business, in the year of assessment, the interest paid on it should be deducted under section 10 (2) (iii) of the Indian Income-tax Act. The facts were that the assessee was a Nattukottai Chetty firm trading under the vilasam of A.L.A.R., their primary business being the usual Nattukottai Chetty business of banking and money-lending. Under the style of Ramaswami & Co., they also traded in piecegoods in Madras. That business was unsuccessful and when closed down in 1924 had sustained a loss of Rs. 11,00,000 odd. It was

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found by the Commissioner of Income-tax that the business of Ramaswami & Co. was quite separate and distinct from that of A.L.A.R. The Full Bench of which I was a member, however, did not agree with this finding and held that it was not a separate business but only a branch of the same business and the finding of principle arrived at is upon that basis and that basis alone. As I was a member of that Bench, I am free to express my opinion, which is, that the finding of fact of the Income-tax Commissioner ought to have been accepted and that the view of COUTTS TROTTER C.J. on this question of fact, with which of course I agreed, was erroneous. I now think that we were mistaken in holding that the piece-goods business which was carried on under a different name and in a different place was only a branch of the banking business because I am now satisfied that those two businesses were separate and distinct. I think that the examples given by COUTTS TROTTER C.J. on page 299 are not quite happy ones. This decision can only be taken as applying the principle to cases where the businesses are not separate. What is the position in the present case? The fallacy underlying the assessee's argument is that because a company carries on several concerns those concerns are all one business, namely, the company's business. That is not so. A company can carry on several distinct and separate businesses and it must always be a question of fact whether these businesses are separate businesses or whether they are so interlocked with the main chief business of the company as to be really one

business; for example, a railway company carrying on a steam-boat business in connection with its railway. This distinction has been recognized in cases under the Income-tax Acts in England. One of these is *Scales v. George Thompson & Co., Ltd.*(1). There, the respondent company was incorporated in 1905 to take over as a going concern the business of George Thompson & Co., shipowners, ship and insurance brokers, underwriters and merchants. As regards their underwriting business the firm had been represented by two of their partners who acted on behalf of the partnership as "names" or members of a syndicate whose credit was used by an underwriting agent in underwriting risks at Lloyd's. The monetary deposit made at Lloyd's in respect of these two partners was transferred to the company, but since Lloyd's will not recognize a company as a name these two partners continued to act as nominees and agents of the company to which all underwriting profits were handed over, the company being responsible for any losses. These profits were brought into the company's accounts with those of the rest of their business. In 1919 one of these nominees retired and in 1920 the other died, whereupon the underwriting business ceased. The company claimed that the underwriting business was a business separate from their other activities and that it should be treated as a separate business in computing their liability. The Special Commissioners allowed their appeal. It was held by the High Court that the question was one of fact and

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

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that there was evidence on which the Commis-
sioners could come to their decision. ROWLATT J.
in his judgment says :

“ This company carried on the business of underwriting. It also had a fleet of steamers. I cannot conceive two businesses that could be more easily separated than those two. . . . One does not depend upon the other ; they are not interlaced ; they do not dovetail into each other, except that the people who are in them know about ships ; but the actual conduct of the business shows no dovetailing of the one into the other at all. They might stop the underwriting ; it does not affect the ships. They might stop the ships and it does not affect the underwriting.”

The same observations can be applied to the present case equally well. The company could cease any one or more of its activities without stopping the others and without getting rid of their share-holding in the Chittivalsah Jute Mills Company, Limited. Similarly, they could get rid of their Chittivalsah Jute Mills shares without stopping any of the other concerns. Cases like the present are dealt with in the *Commissioner of Income-tax, Madras v. Siddha Gowder and Sons*(1) and *Commissioner of Income-tax, Madras v. Best & Co., Madras*(2). The five concerns in question here were separate businesses and, if those businesses had been carried on during the year of account, the profits and gains of each of them separately would have been arrived at under section 10 (1) and (2) of the Act after making the allowances given in sub-section (2) ; and the loss, if any, in any one or more of the businesses thus arrived at would, under section 24 of the Act, be set off against the profits and gains of the more

(1) (1932) I.L.R. 55 Mad. 818 (S.B.). (2) (1932) I.L.R. 55 Mad. 832 (S.B.).

successful businesses arrived at in the same way and the aggregate income computed. But the assesseees are not entitled to adopt this course in the present case because section 10 only deals with businesses which are being carried on and not businesses which have ceased to be carried on as is the case here. For these reasons, the assesseees are not entitled to set off the losses as claimed by them which were of a capital nature against the income from dividends. The question propounded must, therefore, be answered accordingly. Costs to the Commissioner of Income-tax, Rs. 250. The question in Original Petition No. 144 of 1933 is answered in the same way. Costs Rs. 125.

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RAMESAM J.—I agree.

KING J.—I agree.

A.S.V.
