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the Court or Tribunal is founded. The Legislature has expressly entrusted the power of appraisal of evidence to the Taxing authorities, and the decision of those authorities would ordinarily be regarded as final. This is not to say that in a proper case this Court may not, in the interest of justice when occasion demands it, review the evidence. The power of this Court under Art. 136 is not restricted; but it is only in very exceptional cases that this Court enters upon appraisal of evidence in appeals filed with special leave and this case does not disclose any such exceptional circumstances.

On this ground the appeals Nos. 238 and 239 of 1961 filed by the assessees and the Commissioner against the order of the Tribunal must fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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February 19.

INDORE MALWA UNITED MILLS LTD.

v.

THE COMMISSIONER OF INCOME-TAX (CENTRAL) BOMBAY

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

Income Tax—Proceedings under s. 24 of the Indian Income-tax Act,—Scope and effect of section and its proviso—Set-off of loss—Indian Income-tax Act, 1922 (11 of 1922). ss 24(1), (2), 14(2) (c), 4(1) (a), (c).

The assessee company carried on a business of manufacture and sale of textile goods. The manufacture was made at its mills in Indore which was an Indian State before integration and had its own law as to income-tax known as the Indore Industrial Tax Rules, 1927. The sales of textile goods so manufactured were made at various places, some inside and some outside the taxable territories of the then British India. For and upto assessment year 1949-50 the assessee company was treated as a non-resident. Indore became a part of the taxable territories within the meaning of the Indian

Income-tax Act, 1922 in the two assessment years 1950-51 and 1951-52 and the assessee company was held to be "resident and ordinarily resident" within the meaning of that Act. Upto the assessment year 1949-50 that part of its profits which was received by the assessee company in British India was subjected to tax together with its other income which accrued in British India. In making the calculation of business profits or loss received or arising in the taxable territories, a proportion was struck between the total turnover and its sales the proceeds whereof were received in the taxable territories. The assessee company raised two questions in the course of the assessment proceedings, one of which with regard to the entire loss of Rs. 5,19,590/- of the year 1948-49 which it claimed to set-off against the profits made in its business in the two assessment years. The assessee company contended that the business was one and under s. 24 it was entitled to set off the losses which it had sustained in 1948-49. The High Court decided this question against the assessee company, but gave a certificate under s. 66A of the Act.

Held, on appeal, that the High Court correctly answered the question. The provisions of s. 24 of the Act read with the provisions in s. 4(1) (a) and (c) and s. 14(2)(c) make it clear that sub-s(1) of s. 24 when it talks of profits or gains has reference to taxable profits or taxable gains ; it has no reference to income accruing or arising without the taxable territories which were not liable to be assessed in the case of non-residents. In determining the nature of the losses under consideration in these appeals the relevant year was 1948-49, the year in which the losses occurred, and the High Court rightly took the view that for the application of sub-s (2) of s. 24, the losses must be such losses as could have been set-off under sub-s.(1) of s. 24.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 149 and 150 of 1961.

Appeals from the judgment and order dated September 23, 1958, of the Bombay High Court in I.T.R. No. 86 of the 1957.

R. J. Kolah, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellants.

K. N. Rajagopala Sastri and *D. Gupta*, for the respondent.

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1962. February 19. The Judgment of the Court was delivered by.

S. K. DAS, J.—These are two appeals on a certificate of fitness granted by the High Court of Judicature at Bombay under s. 66A(2) of the Indian Income-tax Act, 1922. The relevant facts which have given rise to them are shortly stated below.

The Indore Malwa United Mills, a limited liability company, is the appellant before us and will be referred to in this judgment as the assessee company. The respondent is the Commissioner of Income-tax(Central), Bombay. The assessee company carried on a business of manufacture and sale of textile goods. The manufacture was made at its mills in Indore which was Indian State before integration and had its own law as to income-tax known as the Indore Industrial Tax Rules, 1927. The sales of textile goods were made at various places, some inside and some outside the taxable territories of British India. For and upto the assessment year 1949-50 the assessee company was treated as a non-resident within the meaning of s.4A of the Indian Income-tax Act, 1922. For the assessment years 1950-51, and 1951-52 which are two assessment years under consideration, the account years were the calendar years 1946 and 1950 respectively. Indore became a part of the taxable territories within the meaning of the Indian Income-tax Act is the two assessment years and the assessee company was held to be "resident and ordinarily resident" with the meaning of that Act. Upto the assessment year 1949-50 that part of its profits which was received in British India was subjected to tax together with its other income which accrued in British India, namely, interest on securities and interest on bank accounts. In the assessments made for the assessment years 1948-49 and 1949-50 the

position of the assessee company was stated to be as follows:

1948-49

Income under the head 'Interest on securities'	...	Rs. 1,032
Income under the head 'Other sources' interest from banks	...	Rs. 231
		Rs. 1,263

Business loss Rs. 1,992/-. Balance of loss Rs. 729/- carried forward.

1949-50

Interest on securities	...	Rs. 1,023
Bank interest	...	Rs. 213
		Rs. 1,236
Less : loss of 1948-49 set off	...	Rs. 729
Total income	...	Rs. 507

In making the calculation of business profits or loss received or arising in the taxable territories, a proportion was struck between the total turn-over of the assessee company and its sales the proceeds whereof were received in the taxable territories. The following table, which is part of the order of assessment of 1950-51, shows clearly how the calculation was made.

Assessment year	Net profit of the company before allowance of depreciation	Depreciation as per the Indian Income-tax Act	Business income of the company (Col. 2 minus col.3)	Total turnover of the company	Sales for which proceeds were received in the taxable territories	Business profit considered as having been received in the taxable territories(by apportioning the amount in col. 4 in the proportion of col 5 : col. 6)	Other income accruing in the taxable territories	Total income for the purpose of assessment under the Indian Income-tax Act.(Col.7 plus col. 8)
1	2 Rs.	3 Rs.	4 Rs.	5 Rs.	6 Rs.	7 Rs.	8 Rs.	9 Rs.
1946-47	—	—	—	1,81,71,152	52,68,048	5,05,296	1,854	5,07,150
1947-48	—	—	—	1,45,22,377	5,46,322	21,028	1,467	22,495
1948-49	Loss —	—	—	1,57,82,905	60,000	1,992 (loss)	1,263	729 (loss)

During the course of the assessment proceedings for 1950-51 the assessee company claimed that it was entitled to a set off of the entire losses of the assessment year 1948-49 which, it was common ground before the Tribunal, came to Rs. 5,19,590/-, and not merely the proportionate loss. The assessee company also claimed that the depreciation allowances of the two years 1948-49 and 1949-50 to which effect could not be given in those years and which had, therefore, to be carried forward should be added to the depreciation allowance of 1950-51 and be set off against the profits and gains of the assessee company liable to assessment in the assessment years in question. It is to be noted that the assessment of the assessee company for the assessment years 1948-49 and 1949-50 was made both under the Indian Income-tax Act and under the Indore Industrial Tax Rules, 1927. Now the assessee company made two claims in the course of the assessment proceedings for 1950-51. One was with regard to the loss of Rs. 5,19,590/- and the assessee company's contention was that it was entitled to set off this loss against the profits made in its business in that year and it also contended that it was entitled to carry forward the unabsorbed depreciation into that year. The first contention of the assessee company was rejected by the Tribunal but the second was allowed. Two questions were then raised, one at the instance of the assessee company and the other at the instance of the Commissioner, dealing with the aforesaid two claims of the asseessee company. These two questions were :

> "1. Whether the loss of Rs. 5,19,590/- of the year 1948-49 is liable to be set off against the assessee's business income for the assessment years 1950-51 and 1951-52 ?
>
> 2. Whether the unabsorbed depreciation of the years 1948-49 and 1949-50 is liable to

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be set off against the income of the assessee for the assessment years 1950-51 and 1951-52."

On being satisfied that aforesaid two questions arose out of its order, the income-tax Appellate Tribunal, Bombay Bench A, referred them to the High Court of Bombay under s, 66(1) of the Indian Income-tax Act. The High Court answered the first question against the assessee company and the second question in its favour by its judgment and order dated September 23, 1958. The assessee company then moved the High Court for a certificate under s. 66A(2) of the Indian Income-tax Act with regard to the answer given by the High Court to the first question and having obtained a certificate of fitness has preferred the two appeals to this Court. We are concerned in these two appeals with the correctness or otherwise of the answer given by the High Court to the first question; the second question does not fall for our consideration.

On behalf of the assessee company s. 24(2) of the Indian Income-tax Act has been relied on in support of the claim that the assessee company is entitled to carry forward and set off the entire loss of Rs. 5,19,590/- incurred in the year 1948-49 against the assessee company's business income for the assessment years 1950-51 and 1951-52. Mr. Kolah appearing on behalf of the assessee company has put his argument in the following way. First of all, he has submitted that the Income-tax Officer wrongly proceeded on the footing as though the assessee company was carrying on two separate businesses, one within the taxable territories and the other outside them. Mr. Kolah has contended that the business was one business within the meaning of s. 10 of the Indian Income-tax Act and in the two assessment years in question Indore having become a part of the taxable territories, the provisions in sub-s. (2) of s. 24 came into operation; therefore, the losses which the assessee

company sustained in 1948-49, being a previous year not earlier than the previous year mentioned in the sub-section and the losses not having been set off under sub-s.(1) of s. 24, the assessee company was entitled to carry forward the losses and set them off against the profits and gains of the assessee company from the same business under any other head, as the time limit of six years had not expired. As against this argument, the contention on behalf of the respondent has been that s.24 has no application in the facts of the present case inasmuch as in the year 1948-49 in which year the losses had occurred, the assessee company was treated as a non-resident. On behalf of the respondent it has been submitted that the provisions of s. 24 are applicable only to profits and gains which are assessable under the Indian Income-tax Act and in the case of non-residents who were assessees in British India or in the taxable territories. The claim to set off is only allowable in respect of loss of profits or gains incurred by the non-residents under any of the heads mentioned in s. 6, and s. 24 is applicable only to such loss of profits and gains which if they had been profits and gains would have been assessable in British India or the taxable territories. It is contended that in the case of non-residents, income accruing or arising without British India or without taxable territories is not liable to be assessed and the loss of such profits and gains is not contemplated to be set off within the provisions of sub-ss. (1) and (2) of s. 24 of the Indian Income-tax Act.

Before we consider these contentions it is necessary to set out the material provisions of the Indian Income-tax Act as they stood at the relevant time.

> "4. (1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived

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which—

(a) are received or deemed to be received in British India in such year by or on behalf of such person, or

(b) x x x x

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year :

x x x

14, (1) x x x

(2) The tax shall not be payable by an assessee—

(a) x x x

(b) x x x

(c) in respect of any income, profits or gains accruing or arising to him within an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee, or are assessable under section 12B or section 42.

24. (1) Where any assessee sustains loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year :

Provided that, where the loss sustained is a loss of profits or gains which would but for the loss have accrued or arisen within an Indian State and would, under the provisions of clause (c) of sub-section (2) of section 14, have been exempted from tax, such loss shall not be set off except against profits or gains accruing or arising within an Indian

State and exempt from tax under the said provisions.

x x x

(2) Where any assessee sustains a loss of profit or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head "Profits and gains of business, profession or vocation", and the loss cannot be wholly set off under sub-section (1) the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years:

Provided that—

(a) Where the loss sustained is a loss of profits and gains of a business, profession or vocation to which the first proviso to sub-section (1) is applicable and the profits and gains of that business, profession or vocation are, under the provisions of clause (c) of sub-section (2) of section 14, exempt from tax, such loss shall not be set off except against profits and gains accruing or arising in an Indian State from the same business, profession or vocation and exempt from tax under the said provisions;

(b) Where depreciation allowance is, under clause (b) of proviso to clause (vi) of sub-section (2) of section 10, also to be carried forward, effect shall be given to the provisions of this sub-section;

x x x ."

It may perhaps be stated here that Mr. Kolah has placed no reliance on the provisions of the Taxation Laws (Part B States) (Removal of

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Difficulties) Order, 1950. Clause 3 of the said Order provides that losses suffered in Indian States can be carried forward and set off only if under the State law they could be so carried forward or set off. Admittedly, under the Indore Industrial Tax Rules, 1927 there was no provision for the carrying forward of losses; therefore, cl. 3 of the Taxation Laws (Part B States)(Removal of Difficulties) Order, 1950 was of no assistance to the assessee company. This view of the High Court has not been contested before us and we need, therefore, make no further reference to this aspect of the case.

The answer to the question which we have to consider depends on the true scope and effect of s. 24 of the Indian Income-tax Act. Under the Indian Income-tax Act, 1922, assessees are divided into three categories: (a) resident and ordinarily resident, (b) resident but not ordinarily resident, and (c) not resident. We are concerned in the present case with an assessee who in the year in which the loss which is sought to be carried forward occurred, was a non-resident. Sub-section (1) of s. 4, the material portion of which we have quoted earlier, states that persons who are not resident in India are liable to charge under cl. (a) or cl.(c) of the said sub-section. They may be taxed under cl. (a) on income received or deemed to be received in India even if it accrues elsewhere, or under cl.(c) on income which accrues or arises or is deemed to accrue or arise in India even if it is received elsewhere. The liability to tax in respect of income received in India is common to both residents and non-residents and is imposed by the general clause (a). A non-resident, unlike a resident, is not chargeable in respect of income accruing or arising without India and not received in India. Section 14(2) (c), which is now deleted, had great importance when British India was distinct from Indian States, because it exempted income which accrued

or was received in the Indian States but was not brought into British India. The deletion of this clause became inevitable upon the merger of the Indian States. This clause which was inserted in 1941 exempted income accruing or arising within the Indian States; but the exemption did not apply if the income was received or deemed to be received in or was brought into the taxable territories in the previous year by or on behalf of the assessee or if the income was assessable under s. 128 or s. 42. The position, therefore, was that losses made in British India could not be reduced by adjusting against them the profits in the Indian States which were exempted under the clause, but the income exempted from the clause had, however, to be included in the assessee's total income for the purpose of determining the rate applicable to his taxable income. But so far as a non-resident was concerned the clause had no application, because a non-resident was not chargeable in respect of income accruing or arising without India and not received in India. Now, we come to s. 24, subss.(1) and (2) with the provisos appended thereto which we have quoted earlier in this judgment. It appears that prior to 1950 profits accruing in the Indian States, later called Part B States, were exempt from tax under s. 14(2)(c), unless they were received in or brought into the territories then referred to as British India or were assessable under s. 128 or s. 42. The first proviso to sub-s.(1) as it stood at the relevant time dealt with losses accruing in the quondam Indian States and provided that losses incurred in the Indian States should be set off only against profits accruing in the Indian States. This was a reasonable provision, because an assessee who was not liable to tax in respect of his profits arising in the Indian States could not be allowed to set off his losses incurred in the Indian States against his profits arising in British India. Similarly, cl.(a) of the proviso to sub-s. (2) enacted that losses incurred in an Indian State could be

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carried forward and set off only against profits accruing in an Indian State from the same business in a subsequent year. The argument on behalf of the respondent is that so far as a non-resident is concerned, he is not chargeable in respect of income accruing or arising without India and not received in India. Therefore, in his case it is unnecessary to go to the provisos, but s. 24 itself has no application because sub-s. (1) of s. 24 when it refers to loss of profits or gains, has reference to taxable profits or taxable gains and sub-s.(2) of s. 24 can only be applied in a case where the loss cannot be set off under sub-s.(1) because of the absence or inadequacy of profits etc. In other words, the argument is that s. 24 is applicable only to such loss of profits and gains which if they had been profits and gains would have been assessable in British India or the taxable territories; but in the case of non-residents, income accruing or arising without British India or without the taxable territories not being liable to be assessed, the loss of such profits and gains is not contemplated to be set off within the provisions of s. 24, sub-ss. (1) and (2).

Mr. Kolah has pointed out that sub-s.(2) of s. 24 as also sub-s.(1) talk of "any assessee" and he has argued that there is no reason why the provisions of sub-s.(2) of s. 24 should not be applicable to a non-resident assessee. He has further argued that whatever might have been the effect of the provisos in 1948-49, in 1950-51 Indore became part of the taxable territories and the assessee company became entitled to carry forward the losses up to six years and there is nothing in s. 24(2) to prevent him from making the claim. We are unable to accept this argument as correct. Reading the provisions in s. 24 with the provisions in s.4(1)(a) and s. 14(2)(c) it seems clear to us that s. (24)(1) when it talks of profits or gains has reference to

taxable profits or taxable gains; in other words, it has reference to such profits and gains as would have been assessable in British India or the taxable territories. It has no reference to income accruing or arising without British India or without the taxable territories which were not liable to be assessed in the case of non-residents. We are further of the view that for determining the nature of the losses under consideration in the present appeals, the relevant year was 1948-49, the year in which the losses occurred and the High Court rightly took the view that for the application of sub-s. (2) of s. 24, the losses must be such losses as could have been set off under sub-s.(1) of s. 24. We agree with the view expressed by the High Court that the loss amounting to Rs. 5,19,590/- was not such a loss as could have been set off either under sub-s. (1) or sub-s. (2) of s. 24.

We have, therefore, come to the conclusion that the High Court correctly answered the question which was referred to it. Accordingly, the appeals fail and are dismissed with costs, one hearing fee.

Appeals dismissed.