In our opinion s. 9 (3) cannot be read by itself without reference to s. 7. A statute must be so read that all the sections as far as possible are reconciled and fitted into the scheme which the Legislature embodied in the statute. The scheme of s. 7 is clear and when we turn to s. 9 (3) it only refers to how the assessment of the principal company has got to be made with reference to the subsidiary company. Section 9 (3) does not mean that in deciding whether the subsidiary company has made profits or not s. 7 has got to be completely overlooked and not given its proper application. Therefore, when for the purpose of s. 9 (3) it has got to be decided whether the subsidiary company has made any profits during the chargeable accounting period the profits are only to be determined subject to the provisions of s. 7. Therefore, the profits of Sarabhai Ltd. for the chargeable accounting period are the profits actually made by them during that period less Rs. 1,83,422 which is the deficiency of profits which under s. 7 Sarabhai Ltd. are entitled to carry forward to the next year. It must not be forgotten that when we have to assess the excess profits of the assessee it is not only in respect of its own business but also in respect of the business of Sarabhai Ltd. which has become a subsidiary company during the chargeable accounting period. Therefore, the Tribunal was right in the view it has taken and the result is that the question that is submitted to us must be answered in the negative. The Commissioner must pay the costs of the reference.

Attorney for respondent: *Payne & Co.*

Attorney for Commissioner: *N. K. Petigara.*

Answer accordingly.

A. J. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

MESSRS. HARAKCHAND MAKANJI AND CO., APPLICANT *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY, RESPONDENT.*

1952 *March* 31

Indian Income-tax Act (XI of 1922), ss. 24, 42—Tax on the statutory agent of foreign principal—Goods purchased in Bombay and shipped to Sudan—Whether profit and loss should be apportioned for taxing purposes in the taxable territory—Whether the loss may be allowed to be carried forward under s. 24 (2) of the Act.

*Income-tax Ref, No, 33 of 1951.

1952

MESSRS. HARAKCHAND MAKANJI v. THE COMMISSIONER OF INCOME-TAX, BOMBAY

The assessee being the statutory agent of a foreign principal purchased in Bombay and shipped to Sudan goods of the value of Rs. 16,65,708. Out of these, goods of the value of Rs. 3,09,420 were lost at sea. On the balance of goods of the value of Rs. 13,56,300 the net profits were ascertained at Rs. 2,03,445. The Tribunal set off the loss of Rs. 3,09,420 against the profits of Rs. 2,03,445 and arrived at the net loss of Rs. 1,05,975. The Tribunal however held that the loss could not be apportioned under s. 42 (*3*) nor could it be carried forward under s. 24 (*2*) of the Act.

It was urged that the Tribunal should have ascertained the profit at Rs. 2,03,445 and treated the loss of Rs. 1,05,975 as having accrued in British India and that whilst the profit should have been apportioned under s. 42 (*3*) the loss should not have been apportioned but the whole loss should have been treated as having taken place in the taxable territories.

Held, negativing the contention that the method adopted by the Tribunal in assessing profit or loss was the correct one inasmuch as under s. 42 the income of the foreign principal which accrues to him by a business connection in the taxable territories is an artificial income which is to be taxed under s. 42 (*1*). No question of apportionment arises until such profit or loss is first ascertained under s. 42 (*1*). For such purpose the whole of the income, that is, the whole of the profit or loss of the foreign principal must be considered as his income within the meaning of s. 42 (*1*). Where all the operations of a business are not carried out in the taxable territories the profits and gains have to be apportioned; the profits and gains of the assessee are only those which may reasonably be attributable to that part of the operations which are carried out in the taxable territories. The expression "profits and gains" used in s. 42 (*3*) means not only profits made by the business but the total result of a particular business with the result that the losses as well as profits of the business have to be apportioned under s. 42 (*3*).

Held, therefore, that the losses should have been apportioned under s. 42 (*3*). Once a statutory agent is assessed to tax in respect of the income of the foreign principal, the statutory agent is to be deemed to be for all purposes of the Act the assessee in respect of such income-tax and as such the statutory agent has all the rights of an assessee including the right to a set-off under s. 24 (*2*).

Held, therefore, that the loss as apportioned should have been carried forward under s. 24 (*2*).

The assessee was held by the Income-tax authorities to be the statutory agent of Harkisandas Khushal of Port Sudan.

The appellate Assistant Commissioner confirmed the finding of the Income-tax Officer that the item of Rs. 3,09,420 as representing the loss of goods at sea, could not be allowed because the loss of the goods took place outside British Indian territorial waters.

The appellate Tribunal however held that as the assessee had in fact suffered a loss of Rs. 3,09,420, he was entitled to set off this loss against the profits. The Tribunal however held that the net loss could not be apportioned nor could it be carried forward.

At the instance of the assessee, the following questions of law were referred to the High Court:—

(1) Whether the principle followed by the Appellate Tribunal in computing the non-resident's "deemed" income in British India is in accordance with law?

or

Whether the "deemed" income in British India should be computed on the basis of the purchase operations in British India as done by the Income-tax authorities?

(2) Whether the loss of Rs. 1,05,975 could be apportioned under s. 42 (3) of the Indian Income-tax Act? and

(3) Whether the loss of Rs. 1,05,975 suffered by the non-resident outside British India could be carried forward and set off against the non-resident's income both accrued and deemed to have accrued in the succeeding years?

The reference was heard.

Shankar Narayan with *S. P. Mehta,* for applicant.

C. K. Daphtary, Solicitor-General, for respondent.

CHAGLA C. J.—The assessee has been held to be an agent of Harkisandas Khushal who is a person residing in Port Sudan. It appears that in S. Y. 1999, which is the previous year for the assessment year 1944-45, the assessee shipped to Port Sudan to his foreign principal goods of the value of Rs. 16,65,708. In the course of the shipment goods of the value of Rs. 3,09,420 which were carried on S. S. Rehmani were totally lost as the ship was sunk. The Tribunal has determined the result of the business transaction in the following manner. It has calculated the net profit on the goods sent to Port Sudan at the rate of 15 per cent. It has deducted Rs. 3,09,420 from Rs. 16,65,708 and on the balance at the rate of 15 per cent the resulting amount is Rs. 2,03,445. This is the result of goods sent from British India being sold in Port Sudan. Against this the Tribunal has set off the loss of Rs. 3,09,420 caused to the foreign principal by the goods on S. S. Rehmani being lost, and, therefore, the Tribunal has arrived at a net loss of Rs. 1,05,975.

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MESSRS. HARAKCHAND MAKANJI v. THE COMMISSIONER OF INCOME-TAX, BOMBAY

Chagla C. J.

In our opinion, the method adopted by the Tribunal in assessing the profit or loss is the proper method. Mr. Narayan has argued that whereas they should have ascertained the profit at Rs. 2,03,445 they should have treated the loss of Rs. 1,05,975 as having accrued in British India, and therefore according to him whereas the profit should have been apportioned under s. 42 (3) the loss should not have been apportioned but the whole loss should have been treated as having taken place in the taxable territories. In our opinion, the approach made to this question by Mr. Narayan is not correct. The scheme of s. 42 is that the income of the foreign principal which accrues to him by a business connection in the taxable territories is an artificial income which is to be taxed under s. 42 (1). Once a business connection is established, the income which accrues or arises by reason of that business connection is taxable under s. 42 (1). It is only after that income is determined or if there is a loss that loss is determined, then the stage arises for apportioning the profit or loss under s. 42 (3). No question of apportionment arises in the first instance when the profit or loss has to be ascertained under s. 42 (1). For that purpose the whole of the income or the loss of the foreign principal must be considered as his income within the meaning of s. 42 (1). Therefore in determining the loss of Rs. 1,05,975 the Tribunal were acting properly as required by s. 42 (1). But having done so they took the view that the loss of Rs. 1,05,975 could not be apportioned under s. 42 (3). The Tribunal has given no reason why the loss cannot be apportioned. Turning to s. 42 (3) it is clear that when you find a business of which all the operations are not carried out in the taxable territories, then the profits and gains have to be apportioned and the profits and gains of the assessee are only those which can be reasonably attributable to that part of the operations which are carried out in the taxable territories. It is clear that "profits and gains" as used in this sub-section mean not only profits made by the business, but it means the total result of a particular business, so that if in place of profits and gains there are losses, they are as much to be apportioned as the profits of the business. How the loss should be apportioned between the taxable territories and Port Sudan is a matter for the Tribunal to decide.

The final question raised on this reference is whether the loss as apportioned can be set off under s. 24 (2). The Tribunal has taken the view that the loss cannot be set off. Here also, with respect to the Tribunal, it is difficult to understand why

s 24 (2) does not apply to the case of the assessee. Turning to s. 42 (1), once the statutory agent is assessed to tax in respect of the income of the foreign principal, the statutory agent is to be deemed to be for all the purposes of this Act the assessee in respect of such income-tax. One of the purposes of the Act is to allow the assessee a set off under s. 24 under given circumstances. Therefore, if the statutory agent is an assessee, he has the same right as any other assessee under the Act. There seems to be no reason why the assessee should be deprived of his right to set off under s. 24 (2).

The answer to question 1 will therefore be in the affirmative in the first part. Question 2 in the affirmative. Question 3 in the affirmative to the extent of loss being apportioned under s. 42 (3).

No order as to costs.

Attorney for applicants: *S. P. Mehta.*

Attorney for Commissioner: *N. K. Petigara.*

Answer accordingly.

A. J. P.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

THE UNION OF INDIA, APPELLANT (ORIGINAL DEFENDANT) *v.* CHINUBHAI JESHINGBHAI, RESPONDENT (ORIGINAL PLAINTIFF).*

1952 *April* 2

Indian Independence Act, 1947 (10 and 11 Geo. VI c. 30), s. 9—Indian Independence (Rights, Property and Liabilities) Order 1947 arts. 6 and 8—Contract for purchase of goods from the Government of India prior to partition—Liability in respect of the contract after partition—Contract exclusively for the purposes of the Dominion of Pakistan—Goods lying on August 15, 1947 in the Dominion of Pakistan—Liability of the Dominion of Pakistan in respect of the contract.

Held, that on a true construction of the Indian Independence Act, 1947, and the Indian Independence (Rights, Property and Liabilities) Order, 1947, goods originally belonging to the Government of India found lying on August 15, 1947 at a place which formed part of the Dominion of Pakistan fell under the control of that Dominion and that Dominion was entitled to exercise rights of ownership with regard to such goods.

* O. C. J. Appeal No. 60 of 1951, Suit No. 635 of 1950.