1960

Printers (Mysore) Private Ltd. v. Pothan Joseph

Gajendragadkar J.

arbitration they did not anticipate the complications which have subsequently arisen. That is why an arbitration agreement may have been introduced in the contract in question. All these facts have been considered by both the courts, and though it is true that in their approach and final decisions in respect of these facts the two courts have differed in material particulars, they have in the result agreed with the conclusion that the discretion vested in them should be exercised in not granting stay as claimed by the appellant. Under these circumstances we do not think we would be justified in substituting our discretion for that of the courts below. It may be that if we were trying the appellant's application under s. 34 we might have come to a different conclusion; and also that we may have hesitated to confirm the order of the trial court if we had been dealing with the matter as a court of first appeal; but the matter has now come to us under Art. 136, and so we can justly interfere with the concurrent exercise of the discretion by the courts below only if we feel that the said exercise of discretion is patently and manifestly unreasonable, capricious or perverse and that it may defeat the ends of justice. Having regard to all the circumstances and facts of this case we are not disposed to hold that a case for our interference has been made out by the appellant. That is why we dismiss this appeal but make no order as to costs throughout.

Appeal dismissed.

COMMISSIONER OF INCOME-TAX, AHMEDABAD

v.

KARAMCHAND PREMCHAND LTD., AHMEDABAD.

1960

April 28.

(S. K. Das, J. L. Kapur and M. Hidayadullah, JJ.)

Income-tax—Set-off—Business loss in Indian State—Profits in British India—Applicability of the Act to business in Indian State—Business Profits Tax Act, 1947 (21 of 1947), ss. 2(3), 4, 5.

The assessee held the managing agency of a limited company in what was then called "British India" and had also a pharma-

1960

Commissioner of Income-tax v. Karamchand Premchand Ltd.

ceutical business in the Baroda State which was at the relevant time an Indian State. The business in British India showed profits asessable under the provisions of the Business Profits Tax Act, 1947, but the business carried on in Baroda resulted in a loss, in the relevant chargeable accounting periods between 1946 and 1949. Before the Income-tax authorities the assessee claimed that the loss suffered by it in its business in Baroda should be deducted in computing its business income liable to business profits tax, but this claim was rejected on the ground that though under s. 5 of the Act, if it stood by itself without any of the provisoes, the Act wound be applicable to the Baroda business, the third proviso had the effect of excluding that business from the purview of the Act, except in so far as the income, profits or gains of the business were received or deemed to be received in or brought into British India:

Held, that the effect of the third proviso to s. 5 of the Business Profits Tax Act, 1947, was merely to exempt the income, profits and gains of the Baroda business except when they were received or brought into British India, but the business itself was one to which the Act was applicable under the substantive part of s. 5. Consequently, the losses of the business could be set off against the profits of the business in British India.

The relevant provisions of the Act are set out in the judgment.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 304 of 1958.

Appeal from the judgment and order dated September 7, 1956, of the Bombay High Court in Income-tax Reference No. 19 of 1956.

C. K. Daphtary, Solicitor-General of India, K. N. Rajagopal Sastri and *D. Gupta,* for the appellant.

N. A. Palkhivala and *S. N. Andley,* for the respondent.

1960, April 28. The Judgment of the Court was delivered by

S.K. Das J.

S. K. DAS, J.—This is an appeal on a certificate of fitness granted by the High Court of Bombay, and the short question for decision is the true scope and effect of the third proviso to s. 5 of the Business Profits Tax Act, 1947 (Act No. XXI of 1947), hereinafter referred to as the Act. The appellant is the Commissioner of Income-tax, Ahmedabad, and the respondent is a private limited company under the name and style of Karamchand Premchand Ltd., Ahmedabad, to be called hereafter as the assessee.

The relevant facts are these: the assessee held the managing agency of the Ahmedabad Manufacturing and Calico Printing Co. Ltd. It also had a pharmaceutical business in the Baroda State, which was at the relevant time an Indian State run in the name and style of Sarabhai Chemicals. The assessee's business in India (we shall use the expression India in this judgment to mean British India as it was then called in contra-distinction to an Indian State) showed business profits assessable under the provisions of the Act; but the business carried on in the name and style of Sarabhai Chemicals in Baroda showed a loss in the relevant chargeable accounting periods which were four in number, namely: (1) April 1, 1946, to December 31, 1946; (2) January 1, 1947, to December 31, 1947; (3) January 1, 1948, to December 31, 1948; and (4) January 1, 1949, to March 31, 1949. The assessee claimed that its assessable income in India should be reduced by the loss suffered by it in its business in Baroda. The Income-tax Officer rejected the claim of the assessee and held that the Act did not apply to the business carried on in an Indian State unless profits and gains of that business were received or deemed to have been received in or brought into India. On appeal the Appellate Assistant Commissioner upheld the contention of the assessee and allowed the appeal. The Department went up in appeal to the Appellate Tribunal, which held that under the relevant proviso to s. 5 of the Act, profits and losses of a business in an Indian State were not to be taken into consideration unless they were received or deemed to have been received in or brought into India. In that view of the matter the Tribunal set aside the order of the Appellate Assistant Commissioner and restored that of the Income-tax Officer. The assessee then moved four applications in respect of the four relevant chargeable accounting periods, and by these applications the assessee required the Tribunal to state a case to the High Court of Bombay on the question of law which arose out of its order. These four applications were consolidated. The Tribunal on being satisfied that a question of law arose out of its order in the four cases numbered as 85, 86, 87

1960

Commissioner of Income-tax
v.
Karamchand Premchand Ltd.

S. K. Das J.

and 88 of 1953-54, referred that question to the Bombay High Court in the following terms:

> "Whether on the facts and in the circumstances of the case the loss suffered by the assessee in the business of Sarabhai Chemicals should be deducted in computing the business income of the assessee company liable to business profits tax?"

The High Court answered the question in the affirmative and came to the conclusion that the assessee was entitled to deduct the losses incurred by it in its Baroda business and set them off against the profits made in the taxable territories. The appellant then moved the High Court and obtained a certificate of fitness. On that certificate the present appeal has come to us.

The main contention on behalf of the appellant is that the High Court came to an erroneous conclusion with regard to the true scope and effect of the third proviso to s. 5 of the Act. It is necessary here to refer to some of the provisions of the Act to understand its general scheme. In 1940 the Central Legislature passed the Excess Profits Tax Act, 1940 (Act No. XV of 1940), to impose a tax on excess profits arising out of certain businesses. We shall have occasion to refer to some of the provisions of that Act, in due course. For the purposes of that Act, the expression "chargeable accounting period" meant (a) any accounting period falling wholly within the term beginning on September 1, 1939, and ending on March 31, 1946, and (b) where any accounting period fell partly within and partly without the said term, such part of that accounting period as fell within the said term. It may be here stated that originally the term was from September 1, 1939, to March 31, 1941, but by several annual Finance Acts the term was extended up to March 31, 1946.

In 1947 came the Act in which "chargeable accounting period" means:

> (a) any accounting period falling wholly within the term beginning on April 1, 1946, and ending on March 31, 1949, and
>
> (b) where any accounting period falls partly within and partly without the said term, such part

of that accounting period as falls within the said term.

The Act extended to the whole of India. The world "business" is defined in s. 2(3) of the Act as including any trade, commerce or manufacture, etc., the profits of which are chargeable according to the provisions of s. 10 of the Indian Income-tax Act, 1922. There are two provisoes to this definition clause, and the second proviso states that all businesses to which the Act applies carried on by the same person shall be treated as one business for the purposes of the Act. The expression "taxable profits" is defined under s. 2(17) of the Act and it means the amount by which the profits during a chargeable accounting period exceed the abatement in respect of that period. What is meant by "abatement" is defined in s. 2(1) of the Act. The charging section is s. 4 and we may read that section here, so far as it is relevant for our purpose, in order to understand the general scheme of the tax imposed under the Act.

"S. 4. *Charge of tax*—Subject to the provisions of this Act, there shall in respect of any business to which this Act applies, be charged, levied and paid on the amount of taxable profits during any chargeable accounting period, a tax (in this Act referred to as "business profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1947, be equal to sixteen and two-third per cent. of the taxable profits, and in respect of any chargeable accounting period beginning after that date be equal to such percentage of the taxable profits as may be fixed by the annual Finance Act."

Shortly stated, the scheme is that in respect of any business to which the Act applies, there shall be charged, levied and paid a tax called "business profits tax" on the amount of the taxable profits, which means the amount exceeding the abatement, during any chargeable accounting period; the tax shall be equal to sixteen and two-third per cent. of the taxable profits in respect of the chargeable accounting period ending on or before March 31, 1947, and in respect of any chargeable accounting period after that date, the tax shall

1960

Commissioner of Income-tax
v.
Karamchand Premchand Ltd.

S. K. Das J.

be equal to such percentage of the taxable profits as may be fixed by the annual Finance Act. Then comes s. 5 which is the section dealing with the application of the Act and it is in these terms:

"S. 5. *Application of Act*—This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section:

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without the taxable territories where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in the taxable territories unless the business is controlled in India:

Provided further that where the profits of a part only of a business carried on by a person who is not resident in the taxable territories or not ordinarily so resident accrue or arise in the taxable territories or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then except where the business being the business of a person who is resident but not ordinarily resident, in the taxable territories is controlled in India, this Act shall apply only to such part of the business and such part shall for all the purposes of this Act be deemed to be a separate business:

Provided further that this Act shall not apply to any income, profits or gains of business accruing or arising within any part of India to which this Act does not extend unless such income, profits or gains are received in or are brought into the taxable territories in any chargeable accounting period, or are assessable under section 42 of that Act."

We have read the section as it stands to-day. The expression "taxable territories" in the provisoes was substituted for "British India" by the Adaptation of Laws Order, 1950, and the third proviso originally referred to any income, profits or gains of business accruing or arising within "any Indian State"; then

the expression "a Part B State" was substituted, but this was again changed by the Adaptation of Laws (No. 3) Order, 1956, and the present expression "any part of India to which this Act does not extend" was introduced. For the purposes of this appeal nothing turns upon these changes, and we may read the third proviso as referring to any income, profits or gains of a business accruing or arising in an Indian State. Section 6 deals with relief on occurrence of "deficiency of profits" an expression which is defined in s. 2(7) of the Act. The rest of the Act deals with matters, such as issue of notice for assessment, assessments, profits escaping assessment, penalties, appeal, etc., with which we are not directly concerned in this appeal.

Now, ss. 4 and 5 of the Act make it quite clear that the unit of taxation is the business, that is, any business to which the Act applies; and if a person carries on more than one business to all of which the Act applies, all the businesses carried on by the same person shall be treated as one business for the purposes of the Act. Section 5, in its substantive part, states to which business the Act applies and says that the Act applies to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-cl. (i) or sub-cl. (ii) of cl. (b) of sub-s. (1) of s. 4 of the Indian Income-tax Act, 1922, or cl. (c) of that sub-section. A reference to the aforesaid provisions of the Indian Income-tax Act, 1922, shows at once that in so far as they concern the present assessee s. 5 in its substantive part makes the Act applicable to his business whether the profits of the business accrued or arose in India or Baroda; and this is so in spite of the fact that the Act extended only to India. Indeed, learned counsel for the appellant has conceded that had s. 5 stood by itself without any of the provisoes, the Baroda business of the assessee would have come within the wide ambit of s. 5 and the Act would be applicable to that business. His contention, however, is that the third proviso has the effect of excluding the Baroda business from the purview of the Act, except in so far as the income, profits or gains of that business are received or deemed to

1960

Commissioner of Income-tax v. Karamchand Premchand Ltd.

S.K. Das J.

be received in or brought into India. On behalf of the assessee the argument is that in its true scope and effect the third proviso has merely the effect of exempting the income, profits or gains of the Baroda business except when they are received or brought into India, but the business itself is not excluded from the purview of the Act; the business is still one to which the Act applies under the substantive part of s. 5 and as the third proviso exempts income, profits or gains only, the losses of the Baroda business can be set off against the profits of the business in India.

These are the two main rival contentions which we have to consider in this appeal. Now, let us examine a little more closely ss. 4 and 5 of the Act. We have stated earlier that s. 4 is the charging section, which levies a tax on the amount of taxable profits during any chargeable accounting period, in respect of any business to which the Act applies. The corresponding section in the Excess Profits Tax Act, 1940, was also s. 4 thereof, which levied a tax on the amount by which the profits during any chargeable accounting period exceeded the standard profits in respect of any business to which that Act applied. Under the Excess Profits Tax Act, 1940, as also under the Act under our consideration, the unit is the business—business to which the Act applies. For the application of the Act we have to go to s. 5. We have pointed out that s. 5 in its substantive part makes the Act applicable to every business of which any part of the profits is chargeable to income-tax by virtue of the provisions of sub-cl. (i) or sub-cl. (ii) of cl. (b) of sub-s. (1) of s. 4 of the Indian Income-tax Act, 1922, and, thus makes the Act applicable to the Baroda business of the assessee. The question then is—does the third proviso to s. 5 exclude that business except in so far as the income, profits or gains of that business are received or deemed to be received in or are brought into the taxable territories in any chargeable accounting period? If that is the true scope and effect of the third proviso, then the appellant is entitled to succeed. If, on the countrary, the third proviso merely makes the Act inapplicable to income, profits or gains of the Baroda business unless such income, profits or gains are

received or deemed to be received in or are brought into the taxable territories, but does not exclude the business from the purview of ss. 4 and 5, then the answer given by the High Court is correct.

The High Court has stated that whichever view is taken the third proviso leads to certain difficulties, and in a case where much can be said on both sides, the benefit of any ambiguity of language must be given to the assessee. We agree with the High Court that the question is not quite free from difficulty; but on the language of the proviso as it stands, the answer given by the High Court appears to us to be the correct answer.

It is not the case of the appellant that the first and the second provisoes to s. 5 apply to the facts of this case. But it is significant to note the phraseology of these two provisoes and contrast them with the third proviso. The first proviso says:—

> "Provided that the Act shall not apply to any business the whole of the profits of which accrue or arise without the taxable territories, etc."

The language is clear enough to exclude the business referred to therein from the purview of the Act. Similarly, the second proviso excludes under certain circumstances part of a business and uses appropriate language to give effect to that exclusion. By a legal fiction as it were, it divides a business into two parts, one separate from the other, and makes the Act applicable to one of them only. Unlike the other two provisoes, the third proviso does not use the language of exclusion in respect of any business. What it takes out of the ambit of the Act is merely the "income, profits and gains" of a particular business. The language is thus more apt to effectuate an exemption from tax of "income, profits or gains" rather than an exclusion of the business from the purview of the Act. On behalf of the appellant it is contended that such a construction results in this anomaly that if the income, profits or gains are not brought into India, they escape tax and yet the losses of a business which is outside India are taken into consideration in computing the profits, etc., in India. This, it is argued, could not have been the object of the legislature in

1960

Commissioner of Income-tax v. Karamchand Premchand Ltd.

S.K. Das J.

enacting the third proviso to s. 5 of the Act. It is contended that the object was to exclude the business in an Indian State as also the income, profits or gains thereof, unless such profits, etc., were received in or brought into India. This argument is not devoid of plausibility and requires careful consideration.

We may here refer to the relevant provisions of the Excess Profits Tax Act, 1940. Section 5 of that Act in its substantive part and the first and second provisoes thereto were worded in identical language, but the third proviso to s. 5 of the Excess Profits Tax Act, 1940, was worded quite differently from the third proviso to s. 5 of the Act. The third proviso to s. 5 of the Excess Profits Tax Act, 1940, stated:

> "Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in a Part B State, and where the profits of a part of a business accrue or arise in a Part B State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in a Part B State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business."

The language used was clearly one of exclusion, and it said that the Excess Profits Tax Act was not applicable to a business the profits of which accrued or arose in a Part B State. Why then did the legislature use different language in the third proviso to s. 5 of the Act? On behalf of the appellant it has been submitted that the change in language is deliberate and the reason for the change is to make the income, profits or gains of a business accruing in an Indian or Part B State liable to tax when such income, profits or gains are brought in India while under the third proviso to s. 5 of the Excess Profits Tax Act, they were not liable to tax even when they were brought into India. On behalf of the assessee, however, it has been submitted that the change in language is due to a different reason altogether. The third proviso to s. 5 of the Excess Profits Tax Act, 1940, and s. 14(2)(c) (now deleted) of the Indian Income-tax Act, 1922, were enacted at about the same time, and the broad object of both the

provisions was to exclude profits of a business in an Indian or Part B State from charge of tax; but under the Excess Profits Tax Act, 1940, such profits were not chargeable even if received in or brought into India whereas under s. 14(2)(c) of the Indian Income-tax Act such profits became chargeable to tax if received in or brought into India. This difference, learned counsel for the assessee states, was no doubt done away with by the change in language of the third proviso to s. 5 of the Act; but the change in language did something more, because it assimilated the position under the proviso to that under s. 14(2)(c) of the Indian Income-tax Act, namely, that though profits of a business in an Indian State cannot be taxed unless they are brought into the taxable territories, yet the losses incurred can be adjusted in computing the profits of the business as a whole. Learned counsel for the assessee has relied on the decision of this Court in *Commissioner of Income-tax, Mysore, Travancore-Cochin and Coorg* v. *Indo-Mercantile Bank Ltd.* (1) and the decisions of the Bombay High Court in *Commissioner of Income-tax, Bombay City* v. *Murlidar Mathurawalla Mahajan Association* (2) and *Commissioner of Excess Profits Tax, Bombay City* v. *Bhogilal H. Patel, Bombay* (3). The first two decisions cited above considered the effect of s. 24(1), Indian Income-tax Act, 1922, with special reference to the first proviso thereto (as it stood at the time relevant therein) and its impact on s. 10 of the said Act. It was held that sub-s. (1) of s. 24 dealt only with set-off of loss under one head against profits under any other head, and therefore the old first proviso to sub-s. (1) of s. 24 applied and barred the right of set-off only where a loss in the Indian State was sought to be set off against Indian profits under any other head; where, however, the assessee sought to set off his loss in the Indian State against his Indian profits under the same head, e.g., set-off of loss incurred in a business carried on in an Indian State against the profits of the same or another business carried on in India, the proviso did not apply and the assessee was entitled to such set-off under s. 10

(1) [1959] Supp. 2 S.C.R. 256. (2) [1918] 16 I.T.R. 146.
(3) [1952] 21 I.T.R. 72.

1960

Commissioner of Income-tax
v.
Karamchand Premchand Ltd.

S. K. Das J.

of the Indian Income-tax Act. Learned counsel for the assessee has submitted that the same principle applies with regard to the third proviso to s. 5 of the Act. Learned counsel has submitted that as under s. 10 of the Indian Income-tax Act, different businesses constitute one head and in order to determine what are the profits and gains of a business under s. 10 an assessee is entitled to show all his profits and set off against those profits losses incurred by him, in the same head; so also under s. 5 of the Act, the Baroda business of the assessee is within the ambit of the Act, though the income, profits or gains thereof are excluded by the third proviso unless they are received or brought into India. He has pointed out that the position under the Excess Profits Tax Act was different, as was explained in *Bhogilal Patel's case* (1) where the learned Chief Justice said:

> "This contention of Mr. Kolah is based on the language used in the proviso, namely, that 'this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State'. Now, this contention is obviously fallacious, because the proviso does not say that the Act shall not apply to the profits of a business which accrue or arise in an Indian State. What the proviso says is that the Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State. The expression 'the whole of the profits of which accrue or arise in an Indian State' is an expression which indicates the nature of the business which is excluded from the purview or ambit of the Act".

Now, the third proviso to s. 5 of the Act uses not the phraseology of the Excess Profits Tax Act, but the very phraseology which according to the learned Chief Justice would have made all the difference. Learned counsel for the assessee has argued, and we think it has considerable force, that the legislature had before it the language used in s. 14 (2) (c) of the Indian Income-tax Act and it knew the effect of those provisions and it used the same language in the third proviso to s. 5 of the Act. If the object of the legislature was to exclude the business itself from the ambit

(1) [1952] 21 I.T.R. 72.

of the Act while taxing the profits which were brought into the taxable territories, then it used language which failed to achieve that object.

On behalf of the appellant it has been pointed out that the expression used in the third proviso to s. 5 is — "Provided further that the Act shall not apply to any income, profits or gains of a business, etc." It is argued that this language, (namely, that the Act shall not apply) is apt to exclude from the purview of the Act business the profits of which accrue or arise in an Indian State, except in so far as such profits are brought into the taxable territories. In support of this argument a reference has been made to s. 4(3) of the Indian Income-tax Act as it stood prior to 1939 and reliance is placed on the decisions in *Commissioner of Income-tax, Madras* v. *M. T. T. K. M. M. S. M. A. R. Somasundaram Chettiar* (1) and *Commissioner of Income-tax, Bombay* v. *The Provident Investment Co. Ltd.* (2). It is true that s. 4(3) of the Indian Income-tax Act, as it stood prior to 1939, said that this Act (meaning the Indian Income-tax Act, 1922) "shall not apply to certain classes of income", and in the two decisions cited it was held that the word "business" meant a business whose profits were being assessed in the year under consideration and there was no justification for deduction of the expenses of a foreign business. We do not, however, think that the use of the expression, "the Act shall not apply", is decisive in this case. We have to read the third proviso as a whole and in the context in which it occurs, in order to find out what it means. So read it is difficult to hold that it has the effect of excluding the Baroda business except in so far as the profits thereof are brought into the taxable territories. What it says in express terms is that the Act shall not apply to any income, profits or gains of business accruing or arising in an Indian State, etc. It does not say that the business itself is excluded from the purview of the Act. We have to read and construe the third proviso in the context of the substantive part of s. 5 which takes in the Baroda business and the phraseology of the first and second provisos thereto, which clearly uses the

(1) A.I.R. 1928 Mad. 487. (2) (1931) I.L.R. 56 Bom. 92.

1960

Commissioner of Income-tax v. Karamchand Premchand Ltd.

S.K. Das J.

language of excluding the business referred to therein. The third proviso does not use that language and what learned counsel for the appellant is seeking to do is to alter the language of the proviso so as to make it read as though it excluded business the income, profits or gains of which accrue or arise in an Indian State. The difficulty is that the third proviso does not say so; on the contrary, it uses language which merely exempts from tax the income, profits or gains unless such income, profits or gains are received in or brought into India.

Next, we have to consider what the expression "income, profits or gains" means. In the context of the third proviso, it cannot include losses because the latter part of the proviso says "unless such income, profits or gains are received, etc., into the taxable territories". Obviously, losses cannot be brought into the taxable territories except in an accounting sense, and the expression "income, profits or gains" in the context cannot include losses. The expression must have the same meaning throughout the proviso, and cannot have one meaning in the first part and a different meaning in the latter part of the proviso. The appellant cannot therefore say that the third proviso excludes the business altogether, because it takes away from the ambit of the Act not only income, profits or gains but also losses of the business referred to therein.

On behalf of the appellant it has been argued that though the language of the third proviso to s. 5 of the Act is similar to that of s. 14(2)(c) of the Indian Income-tax Act, the language of the two provisions is not identical and it is not correct to say that their effect is substantially the same. It is pointed out that the language of s. 14(2)(c) was one of exemption only in respect of any income, profits or gains accruing or arising in an Indian State, though for purposes of "total income" the Income-tax Act applied thereto, and therefore the normal process of aggregating profits and losses wherever they occurred could be adopted. But says learned counsel for the appellant, the position is otherwise under the third proviso to s. 5 of the Act, because, firstly, it uses the expression, "the Act

shall not apply" and secondly, there is no question of exempting the profits from tax while including them for the purposes of "total income". We agreed that the complication of excluding the profits from tax while including them for determining "total income" does not arise under the third proviso to s. 5 of the Act; but the argument presented is the same as we have dealt with earlier. The argument merely takes us back to the question—does the third proviso to s. 5 of the Act merely exempt the income, profits or gains or does it exclude the business? If it excludes the business, the appellant is right in saying that the position under the proviso is not the same as under s. 14(2)(c) of the Indian Income-tax Act. If, on the contrary, the proviso merely exempts the income, profits or gains of the business to which the Act otherwise applies, then, the position is the same as under s. 14(2)(c). It is perhaps repetition, but we may emphasize again that exclusion, if any, must be done with reference to business, which is the unit of taxation. The first and second provisos to s. 5 do that, but the third proviso does not.

Lastly, it has been contended that the construction adopted by the High Court is likely to lead to consequences which the legislature manifestly could not have intended. This contention has been pressed in respect of two matters: (a) computation of capital under the rules in Schedule II of the Act in a case where the assessee company sustains a loss in an Indian State; and (b) relief for deficiency of profits where the assessee makes profits in an Indian State but sustains a loss in India. As to the first matter, it has been fully dealt with by the High Court with reference to r. 2A of the Rules in Schedule II and it has been rightly pointed out that no difficulty really arises by reasons of r. 2A. Nor are we satisfied that any real difficulty arises with regard to relief for deficiency of profits when the assessee makes profits in an Indian State but sustains a loss in India. The Act will not apply to such profits unless they are brought into India, and if they are brought into India, s. 6 will apply with regard to relief on the ground of deficiency of profits. It is unnecessary to consider

1960

Commissioner of Income-tax v. Karamchand Premchand Ltd.

S.K. Das J.

here any hypothetical difficulty which may arise in the application of s. 6.

The appellant relies, on the third proviso to s. 5 of the Act in support of the contention that it excludes the Baroda business of the assessee and the losses of that business cannot be set off against the profits of the business in India, and the appellant can succeed only on establishing that the proviso clearly and without any ambiguity excludes the Baroda business. We agree with the High Court that if there is any ambiguity of language, the benefit of that ambiguity must be given to the assessee. However, the conclusion at which we have arrived is that on the language of the proviso as it stands, it does not exclude the Baroda business of the assessee but exempts only the income, profits or gains thereof unless they are received or deemed to be received in or brought into India. Accordingly, the High Court correctly answered the question of law referred to it. The appeal fails and is dismissed with costs.

Appeal dismissed.

1960

April 28

H. C. NARAYANAPPA AND OTHERS

v.

THE STATE OF MYSORE AND OTHERS

(B. P. Sinha, C.J., Jafer Imam, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.)

Transport Business—Stage carriages—Exclusion of private operators—Competence of Parliament to create monopolies—Grant of monopoly to State for transport business—Scheme framed by State for State Transport Undertaking—Legality—Motor Vehicles Act, 1939 (*IV of* 1939), *Ch. IVA, ss. 68C, 68D* (2)—*Constitution of India, Arts.* 12, 13(3)(*a*), 19(1)(*g*), 19(6), 298, *Seventh Schedule, List II, entry* 26, *List III, entries* 21, 35.

In exercise of the powers conferred by s. 68C of the Motor Vehicles Act 1939, the General Manager of the Mysore Government Road Transport Department published a scheme for the exclusion of private operators on certain routes in a specified area and reservation of those routes for the State Transport Undertaking. The scheme was approved by the Government under s. 68D(2) of the Act after the Chief Minister of the State had given an opportunity to the operators affected by the scheme to make representations objecting to it. The petitioners who were