

A RAJASTHAN R.S.S. & GINNING MILLS FED. LTD.
v.
DY. COMMISSIONER OF INCOME TAX, JAIPUR
(Civil Appeal No. 3880 of 2003)

B APRIL 29, 2014

[ANIL R. DAVE AND SHIVA KIRTI SINGH, JJ.]

C *Income Tax Act, 1961 – ss.72 and 72A – Co-operative*
society – Amalgamation of – Set-off of losses of
amalgamating societies against profits of the amalgamated
society – Entitlement to – Four co-operative societies wherein
the State Government had substantial share holding,
amalgamated into appellant co-operative society – Upon
D *amalgamation, registration of said four co-operative societies*
cancelled and all their assets and liabilities taken over by the
appellant society – After amalgamation, when Income-Tax
returns filed by appellant society, it wanted to get accumulated
losses of the aforesaid four societies carried forward, so that
E *the same could be set off against the profits of the appellant*
society – Claim of appellant-society – If tenable – Held: So
far as companies are concerned, there is specific provision
in the Income Tax Act that upon amalgamation of one
company with another, losses of the amalgamating
F *companies can be carried forward and the amalgamated*
company can get those losses set off against its profits subject
to the provisions of the Act – But as at the relevant time there
was no provision under the Act for setting off accumulated
losses of the amalgamating societies against the profits of the
amalgamated society, the appellant society could not have
G *got the benefit of carrying forward losses of the erstwhile*
societies which were not in existence during the relevant
Assessment Year – Societies and companies belong to
different classes and simply because both have a distinct

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legal personality, it cannot be said that both must be given the same treatment – Taxation statutes have to be interpreted strictly – No equity in matters of taxation – Rajasthan Co-operative Societies Act, 1965 – s.16(8). A

Interpretation of Statutes – Taxing statutes – Requirement of strict interpretation – No equity in matters of taxation. B

Vide an administrative decision taken by the Government of Rajasthan, four co-operative societies wherein the Government of Rajasthan had substantial share holding, were amalgamated into the appellant co-operative society w.e.f. 01.01.1993. Upon amalgamation, registration of the said four co-operative societies was cancelled and all the assets and liabilities of the said four societies were taken over by the appellant society. The aforesaid four societies were not sound financially and had substantial accumulated losses. After amalgamation, when Income-Tax returns for the assessment years 1994-95 and 1995-96 were filed by the appellant society, it wanted to get the accumulated losses of the aforesaid four societies carried forward, so that the same could be set off against the profits of the appellant society under the provisions of Section 72 of the Income Tax Act, 1961. C
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The claim of the appellant was negated by the Assessing officer on the ground that the said societies were not in existence after their amalgamation into the appellant society; and as the said four societies were not in existence, their accumulated losses could not have been carried forward or adjusted against the profits of the appellant society. The assessment order was upheld by the CIT (Appeals), the Income Tax Appellate Tribunal and the High Court. F
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In the instant appeal, the main submission on behalf of the appellant society was that the appellant society, being an amalgamated society, must get benefit of setting H

A off losses of the co-operative societies which had been
 amalgamated into the appellant society. It was contended
 that by virtue of the provisions of Section 16(8) of the
 Rajasthan Co-operative Societies Act, 1965, read with
 Sections 72 and 72(A) of the Act, the accumulated losses
 B of the amalgamating societies should have been
 permitted to be adjusted or set off against the profits of
 the appellant society; and that by virtue of Section 16(8)
 of the Rajasthan Co-operative Societies Act, 1965 all legal
 proceedings initiated against or by the amalgamating co-
 C operative societies would continue and therefore, right of
 the amalgamating societies with regard to getting their
 losses carried forward and set off against the profits of
 the amalgamated society would continue.

D Dismissing the appeal, the Court

HELD:1.1. For the purpose of getting carried forward
 losses adjusted or set off against the profits of
 subsequent years, there must be some provision in the
 Income Tax Act, 1961. If there is no provision, the
 E societies which are not in existence cannot get any
 benefit. The losses were suffered by the societies which
 were in existence at the relevant time and their existence
 or legal personality had come to an end upon being
 amalgamated into another society. [Para 16] [346-B-C]

F 1.2. The normal principle is that a non-existent person
 cannot file an income tax return and therefore, cannot
 carry forward its losses after its existence comes to an
 end. All those four societies, upon their amalgamation
 into the appellant society, had ceased to exist and
 G registration of those societies had been cancelled. In the
 circumstances, those societies had no right under the
 provisions of the Act to file a return to get their earlier
 losses adjusted against the income of a different legal
 H personality i.e. the appellant society. [Para 17] [346-D-E]

1.3. So far as companies are concerned, there is a specific provision in the Income Tax Act that upon amalgamation of one company with another, losses of the amalgamating companies can be carried forward and the amalgamated company can get those losses set off against its profits subject to the provisions of the Act. This is permissible by virtue of Section 72 A of the Income Tax Act but there is no such provision in the case of co-operative societies. It is pertinent to note that such a provision has been made only with regard to amalgamation of companies and later on similar provisions were made with regard to banks, etc., but at the relevant time there was no such provision which would permit the amalgamating co-operative society to carry forward and adjust such losses against the profits of the amalgamated co-operative society. [Paras 18, 19] [346-F-H; 347-A]

1.4. The submission made on behalf of the appellant with regard to discrimination and violation of Article 14 of the Constitution cannot be accepted, as there is no discrimination. The societies and companies belong to different classes and simply because both have a distinct legal personality, it cannot be said that both must be given the same treatment. [Para 20] [347-A-B]

1.5. As there is no provision under the Act for setting off accumulated losses of the amalgamating societies against the profits of the amalgamated society, the appellant society could not have got the benefit of carrying forward losses of the erstwhile societies which were not in existence during the relevant Assessment Year. [Para 21] [347-C-D]

1.6. Also, in all the tax matters one has to interpret taxation statute strictly. Simply because one class of legal entities are given some benefit which is specifically stated in the Act does not mean that the legal entities not

- A referred to in the Act would also get the same benefit. There is no equity in matters of taxation. One cannot read into a section which has not been specifically provided for and therefore, one cannot read something in the section which has not been provided for. [Para 22] [347-D-F]

- B *The Commissioner of Income Tax, Lucknow v. Sh. Madho Pd. Jatia* 1976(4) SCC 92: 1977 (1) SCR 665; *M/s. Baidyanath Ayurved Bhawan (Pvt.) Ltd., Jhansi v. The Excise Commissioner, U.P. and others* 1971(1) SCC 4: 1971 (2) SCR 590; and *Commissioner of Income Tax, Bombay v. Maharashtra Sugar Mills Ltd., Bombay* 1971 (3) SCC 543: 1972 (1) SCR 202 – relied on.

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D *Commissioner of Income Tax v. M/s. Shah Sadiq and Sons* 1987(3) SCC 516: 1987 (2) SCR 942 – referred to.

Case Law Reference :

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| | 1987 (2) SCR 942 | referred to | Para 8 |
| E | 1977 (1) SCR 665 | relied on | Para 12 |
| | 1971 (2) SCR 590 | relied on | Para 12 |
| | 1972 (1) SCR 202 | relied on | Para 12 |

- F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3880 of 2003.

From the Judgment and Order dated 19.09.2002 of the High Court of Judicature for Rajasthan, Jaipur Branch, Jaipur, in D.B. Income Tax Appeal No. 19 of 2001.

- G Puneet Jain (for Pratibha Jain) for the Appellant.
H. Raghavendra Rao (for Anil Katiyar) for the Respondent.
The Judgment of the Court was delivered by
H ANIL R. DAVE, J. 1. Being aggrieved by the judgment

delivered on 19th September, 2002 in Income Tax Appeal No.19 of 2001 by the High Court of Judicature of Rajasthan, Jaipur Bench, this appeal has been filed by the assessee, which is a co-operative society. When the appeal was called out for hearing, none had appeared for the appellant co-operative society. Upon perusal of the record, we found that the learned advocate who had appeared earlier had become a senior counsel. In the circumstances, we had requested his colleague to appear in the matter but he had shown his reluctance to appear for the appellant society, especially in view of the fact that though more than two letters had been addressed to the appellant society for sending vakalatnama or for making appropriate arrangement for its appearance in this Court, the appellant society had not even cared to reply to the said letters. As the appellant society is a society wherein the State of Rajasthan has substantial interest, we had requested learned advocate Mr. Puneet Jain to assist the court by appearing for the appellant society and in pursuance of the request of this Court, he had rendered his valuable assistance by appearing for the appellant society.

2. The facts giving rise to the present appeal in a nut-shell are as under:

There were four co-operative societies in the State of Rajasthan wherein the Government of Rajasthan had substantial share holding, namely - (i) Rajasthan Co-operative Spinning Mills Ltd.; (ii) Gangapur Co-operative Spinning Mills Ltd.; (iii) Ganganagar Co-operative Spinning Mills Ltd.; and (iv) Gulabpura Cotton Ginning & Pressing Sahkari Samiti Ltd. An administrative decision was taken by the Government of Rajasthan to amalgamate all the aforesaid co-operative societies into the appellant co-operative society, namely Rajasthan Rajya Sahkari Spinning & Ginning Mills Federation Ltd w.e.f. 01.01.1993.

Upon amalgamation of the said societies into the appellant

A society, the registration of the said four co-operative societies had been cancelled and all the assets and liabilities of the said four societies had been taken over by the appellant society by virtue of the aforestated amalgamation. The aforestated four societies were not sound financially and they had substantial accumulated losses. After the amalgamation of the four co-operative societies into the appellant society, when Income-Tax returns for the assessment years 1994-95 and 1995-96 were filed by the appellant society, the appellant society wanted to get the accumulated losses of the aforestated societies, of about Rs.2,68,39,504/-, carried forward, so that the same could be set off against the profits of the appellant society under the provisions of Section 72 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

The assessing officer negated the appellant's claim for the reason that the said societies were not in existence after their amalgamation into the appellant society. As the said four societies were not in existence, according to the assessing officer, their accumulated losses could not have been carried forward or adjusted against the profits of the appellant society. Assessment orders were passed accordingly.

3. Being aggrieved by the above stated assessment orders, appeals were filed before the CIT (Appeals) and the CIT (Appeals) dismissed the said appeals. Further appeals were filed before the Income Tax Appellate Tribunal but the Tribunal also dismissed the appeals.

4. Being aggrieved by the common order passed by the Tribunal, the appellant filed Income Tax Appeal No.19 of 2001 before the High Court of Rajasthan and the said Income Tax Appeal was also dismissed and therefore, the appellant has approached this Court by way of the present appeal.

5. The learned counsel appearing for the appellant society had submitted that the assessing officer and the authorities below, confirming the view taken by the assessing officer, are

not correct for the reason that upon amalgamation of the
aforestated four co-operative societies into the appellant
society, by virtue of the provisions of Section 16(8) of the
Rajasthan Co-operative Societies Act, rights and obligations
of the societies so amalgamated would not be affected and
therefore, all the rights which the societies had with regard to
carrying forward of their losses would continue, and as the said
societies had been amalgamated into the appellant society, the
appellant society ought to have been permitted to set off the
losses suffered by the amalgamated societies. The learned
counsel had relied upon Section 16(8) of Rajasthan Co-
operative Societies Act, 1965 which is reproduced
hereinbelow:

"16(8) The amalgamation, transfer or division made under
this section shall not affect any rights or obligations of the
societies so amalgamated, or of the society so divided or
of the transferee, or render defective any legal proceedings
which might have been continued or commenced by or
against the societies which have been amalgamated or
divided or the transferee; and accordingly such legal
proceedings may be continued or commenced by or
against the amalgamated society, the new societies or the
transferee, as the case may be."

6. The learned counsel had further submitted that reading
Section 72(1) of the Act with Section 16(8) of the Rajasthan
Co-operative Societies Act, 1965 clearly denotes that the
appellant assessee had a right to carry forward losses incurred
by the amalgamating societies and set off the business losses
of the said societies against the profits and gains of the
appellant society.

7. He had further submitted that the word 'company' used
in Section 72(A) of the Act should be given wide interpretation
so as to include societies in the term 'company' because like
companies, societies also have a distinct legal personality and
there is no reason for the authorities under the Act to give
different treatment to co-operative societies.

A 8. It had further been submitted that the appellant society
 had a vested right to get the accumulated losses of the
 amalgamated societies adjusted against the profits of the
 appellant society and the said vested right could not have been
 taken away by the assessing officer. So as to substantiate his
 B submission, he had relied upon the judgment delivered in the
 case of *Commissioner of Income Tax v. M/s. Shah Sadiq and
 Sons* 1987(3) SCC 516.

C 9. He had, therefore, submitted that the appeal deserved
 to be allowed and the appellant society should be permitted to
 set off accumulated losses of the amalgamating societies
 against the profits of the appellant society.

D 10. On the other hand, the learned counsel appearing for
 the authorities of the Income Tax Department had submitted that
 the concurrent findings of the fact, and the views expressed by
 all the authorities below and the High Court were absolutely
 correct and therefore, the impugned judgment did not require
 any interference. It had been submitted by him that the
 registration of the amalgamating societies had been cancelled
 E upon the amalgamation and as they were not in existence at
 the time when the appellant society was assessed, there was
 no question of carrying forward accumulated losses of the
 amalgamating societies and adjusting them against the profits
 of the appellant society.

F 11. He had drawn our attention to the provisions of Section
 72 and 72A of the Act. He had further submitted that upon
 conjoint reading of Section 72 and 72A of the Act, it is clear
 that the co-operative societies cannot get the benefit of carrying
 forward and setting off accumulated losses if the said societies
 G were not in existence. Only in case of a 'company', the benefit
 of set off could be availed by an amalgamated company, if the
 amalgamating company had accumulated losses which could
 have been carried forward and adjusted against the profits of
 the amalgamated company in accordance with the provisions
 H of the Act.

12. So as to substantiate his submissions, he had relied upon judgments delivered in the case of *The Commissioner of Income Tax, Lucknow v. Sh. Madho Pd. Jatia* 1976(4) SCC 92 and *M/s. Baidyanath Ayurved Bhawan (Pvt.) Ltd., Jhansi v. The Excise Commissioner, U.P. and others* 1971(1) SCC 4. He had also relied upon the judgment delivered in the case of *Commissioner of Income Tax, Bombay v. Maharashtra Sugar Mills Ltd., Bombay* 1971 (3) SCC 543. Upon perusal of the aforesaid judgments, which support the learned counsel appearing for the Income Tax authorities, it is clear that the tax statute should be interpreted very strictly as there is no equity in tax matters and nothing can be read which is not in the section.

13. Thus, the learned counsel appearing for the respondent authorities had submitted that the impugned judgment is just and correct and therefore, the appeal deserved to be dismissed.

14. We had heard the learned counsel and had also perused records pertaining to the case and had also gone through the judgments referred to by them, and upon hearing them we are of the view that the judgment delivered by the High Court is absolutely just and proper.

15. The main submission of the learned counsel appearing for the appellant society was that the appellant society, being an amalgamated society, must get benefit of setting off losses of the co-operative societies which had been amalgamated into the appellant society. According to him by virtue of the provisions of Section 16(8) of the Rajasthan Co-operative Societies Act, 1965, read with Sections 72 and 72(A) of the Act, the accumulated losses of the amalgamating societies should have been permitted to be adjusted or set off against the profits of the appellant society. His main submission was that by virtue of Section 16(8) of the Rajasthan Co-operative Societies Act, 1965 all legal proceedings initiated against or by the amalgamating co-operative societies would continue

A and therefore, right of the amalgamating societies with regard to getting their losses carried forward and set off against the profits of the amalgamated society would continue.

B 16. We are not in agreement with the submissions made by the learned counsel appearing for the appellant for the reason that for the purpose of getting carried forward losses adjusted or set off against the profits of subsequent years, there must be some provision in the Act. If there is no provision, the societies which are not in existence cannot get any benefit. The losses were suffered by the societies which were in existence C at the relevant time and their existence or legal personality had come to an end upon being amalgamated into another society.

D 17. The normal principle is that a non-existent person cannot file an income tax return and therefore, cannot carry forward its losses after its existence comes to an end. All those four societies, upon their amalgamation into the appellant society, had ceased to exist and registration of those societies had been cancelled. In the circumstances, those societies had no right under the provisions of the Act to file a return to get E their earlier losses adjusted against the income of a different legal personality i.e. the appellant society.

F 18. So far as companies are concerned, there is a specific provision in the Act that upon amalgamation of one company with another, losses of the amalgamating companies can be carried forward and the amalgamated company can get those losses set off against its profits subject to the provisions of the Act. This is permissible by virtue of Section 72 A of the Act but there is no such provision in the case of co-operative societies.

G 19. It is pertinent to note that such a provision has been made only with regard to amalgamation of companies and later on similar provisions were made with regard to banks, etc., but at the relevant time there was no such provision which would permit the amalgamating co-operative society to carry forward H

and adjust such losses against the profits of the amalgamated co-operative society. A

20. The submission made by the learned counsel appearing for the appellant with regard to discrimination and violation of Article 14 of the Constitution of India would also not help the appellant, as in our opinion, there is no discrimination. The societies and companies belong to different classes and simply because both have a distinct legal personality, it cannot be said that both must be given the same treatment. B

21. We agree with the view expressed by the High Court that as there is no provision under the Act for setting off accumulated losses of the amalgamating societies against the profits of the amalgamated society, the appellant society could not have got the benefit of carrying forward losses of the erstwhile societies which were not in existence during the relevant Assessment Year. C D

22. We are also of the view that in all the tax matters one has to interpret taxation statute strictly. Simply because one class of legal entities are given some benefit which is specifically stated in the Act does not mean that the legal entities not referred to in the Act would also get the same benefit. As stated by this Court on several occasions, there is no equity in matters of taxation. One cannot read into a section which has not been specifically provided for and therefore, we do not agree with the submissions of the learned counsel appearing for the appellant and we are not prepared to read something in the section which has not been provided for. The judgments referred to hereinabove support the view which we have expressed here. E F

23. For the reasons stated hereinabove, the appeal is dismissed with no order as to costs. G