

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 3880 OF 2003****RAJASTHAN R.S.S. & GINNING MILLS
FED. LTD.****...APPELLANT****VERSUS****DY. COMMISSIONER OF INCOME
TAX, JAIPUR.****....RESPONDENT****JUDGMENT****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 aforestated 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 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

accumulative 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 aforesaid 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 negatived 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.
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 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.

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.
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 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.

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 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 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 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.

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 at the relevant time and their existence or legal personality had come to an end upon being amalgamated into another society.

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 their earlier losses adjusted against the income of a different legal personality i.e. the appellant society.

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.

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

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.
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.

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

.....J.
(Anil R. Dave)

.....J.
(Shiva Kirti Singh)

New Delhi;
April 29, 2014



JUDGMENT