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IN THE COURT OF APPEAL

CIVIL APPEAL No. 42 of 1972

BEFORE: The Hon. Mr. Justice Zacca, J.A.
The Hon. Mr. Justice Henry, J.A.
The Hon. Mr. Justice Robotham, J.A. (Ag.)

ROUND HILL DEVELOPMENT CO. LTD. - APPELLANT

v.

THE COMMISSIONER OF INCOME TAX - RESPONDENT

Enos Grant, Esq. for appellant.

Herbert Hamilton, Esq. for respondent.

January 31; February 1, 1977 April 1, 1977

Zacca, J.A.:

On February 1, 1977, we allowed this appeal, reversed the judgment of the Revenue Court, and restored the Order of the Income Tax Appeal Board with costs to the appellant. We promised to put our reasons in writing and this we now do.

This was an appeal against the decision of the trial judge of the Revenue Court in which he had reversed the decision of the Income Tax Appeal Board. The Board had allowed an appeal by the appellant against a decision of the respondent dated 27th day of July, 1966, which had fixed the chargeable income of the appellant for the year of assessment 1965 in the sum of £5,864.

The facts are not in dispute and indeed no evidence was led before the Revenue Court. The issue on appeal, as it was before the Revenue Court, was whether, in the absence of any direction in section 8 of the Income Tax Law, 1954, the appellant was entitled in the year of assessment 1963 to set off a loss brought

forward for the year of assessment 1958, against its profit for 1963, before setting off capital allowances for the year.

The Revenue Court judge held that the Income Tax Appeal Board was wrong in holding that the appellant was entitled to deduct its previous year losses before its current year capital allowances. That it was the respondent who had the right to dictate the order in which allowances under s. 8 should be deducted and he based this conclusion primarily on s. 47 of the Income Tax Law 1954. He, therefore, preferred the computation for 1963 as put forward by the respondent.

Although the appeal is in respect of the year of assessment 1965, the dispute between the appellant and the respondent is in respect of the method to be used in computing the appellant's "loss" for the year of assessment 1963. The matter came before the Court on appeal in respect of the year of assessment, 1965, because that was the first year, subsequent to 1963, in which the appellant made a profit, and in which, therefore, any question could arise about setting off a loss sustained in 1963.

It was agreed between the appellant and the respondent that an amount is to be set off in respect of the 1963 loss, but they differed as to the quantum thereof.

It may be of assistance to set out, by way of explanation, the respective computations being put forward by the appellant and the respondent.

(1) Appellant's Computation -

(a)	Net profit before capital allowance ..	£5,926
(b)	Set off of 1958 loss (in part)	£5,926
(c)	Set off of capital allowances for 1963	£7,785
(d)	New loss for 1963	£7,785

(2) Respondent's Computation -

(a)	Net profit before capital allowances	£5,926
(b)	Set off of capital allowances for 1963	£7,785
(c)	New loss for 1963	£1,859

It will, therefore, be seen that both parties are agreed that if there is any loss after a set off of capital allowances that loss may be carried forward as a new loss. This Court, like the Revenue Court, did not entertain or consider any argument with respect to whether or not a "loss" after deduction of capital allowances could be carried forward as a loss. We express, therefore, no views on this point.

For the appellant it was submitted that s. 8 gave the Company a statutory right to claim as deductions both previous years losses and capital allowances and that the respondent did not have the right to determine which deduction ought to be set of before the other. The appellant was entitled to claim both deductions and therefore could set off the deductions in the way in which the appellant's computation was made up.

For the respondent it was submitted that s. 47 of the Income Tax Law 1954 gave to the respondent a discretion as to which deductions under s. 8 of the Law may be set off first and that the respondent had a right to determine the order in which the deductions may be made. It was, therefore, contended that the respondent's computation ought to be accepted.

The relevant portions of s. 8 of the Income Tax Law 1954 which need to be considered in deciding the issues are as follows:

> "8. For the purpose of ascertaining the chargeable income of any person, there shall be deducted all disbursements and expenses wholly and exclusively incurred by such person in acquiring the income -
>
> (i) .....
>
> (ii) where the income arises from any other source during such time as is provided for in section 6 of this Law, and such disbursements and expenses may include:-
>
> (e) any allowances made in accordance with the provisions of the Second Schedule to the Law;
>
> .....
>
> .....

(h) the amount of any loss sustained in a trade, profession or business carried on in the Island or in the ownership or occupation of any land situate in the Island -

(i) which, if it had been profit, would have been assessable under this Law;

(ii) during the six years preceding the year of assessment:

Provided that the total amount of such loss which was admitted for those years shall be reduced by any amount which has been claimed under the immediately preceding sub-paragraph or allowed against the income of any previous year or in the year of assessment;

.....

It was agreed by the appellant and the respondent that the word "may" in s. 8 means "must". We are also of the view that the word "may" is used in a mandatory sense and means "must". (See Caribbean Sales Ltd. v. The Commissioner of Income Tax, Revenue Court No. 8 of 1973 - February 5, 1975).

Since the word "may" in s. 8 means "must" then it follows that the appellant is entitled to claim all the deductions allowed under s. 8. The section is silent as to the order, if any, in which the deductions are to be made. The learned judge of the Revenue Court was of the view that s.47 of the Law assisted him in coming to the conclusion that there was a discretion in the Commissioner of Income Tax to dictate the order in which the deductions are to be made.

S. 47 of the Law deals with assessments including the power of assessment given to the Commissioner of Income Tax. We have considered s. 47 and without setting out what this section states, we cannot see how this section can be said to give the respondent any discretion to dictate the order in which the deductions are to be made. We are, therefore, of the view that s.47

has no relevance in the interpretation of s. 8.

The position in England offers no assistance. The United Kingdom Income Tax Act 1952 makes provisions for previous year losses but not as deductions in ascertaining the chargeable income as is the case under s. 8 of the Jamaica Income Tax Law, 1954. (See s. 341 and s. 342 of the United Kingdom Income Tax Act, 1952).

In Canadian Eagle Oil Co. Ltd. v. R. (1946) A.C. 119, 140, Viscount Simon, L.C. said:

> " In the words of the late Rowlatt, J., (In Cape Brandy Syndicate v. Inland Revenue Commissioners (1921) i K.B. 64, 71) whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase, 'in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' "

Looking fairly at the language used in s. 8 of the Law, we are of the opinion that since the appellant is entitled to claim all or any of the deductions allowed under s. 8 of the Law, we are of the opinion that since the appellant is entitled to claim all or any of the deductions allowed under s. 8 of the Law, the question of order or priority of deductions does not arise. Further, we are of the view that the Law gives no discretion to the respondent to dictate the order in which the deductions are to be made. To accept the computation of the Commissioner, in the absence of any express statutory provision so to do, would be to deprive the tax payer of an undoubted benefit which the statute has given him. We, therefore, hold that the appellant is entitled to the deductions as set out in his computation.

For these reasons we allowed the appeal and made the Order as above stated.