
(1978) 09 AHC CK 0050

In the Allahabad High Court

Case No : Income-tax Reference No. 854 of 1972

Beni Prasad Sidhgopal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-09-1978

Acts Referred:

Income Tax Act, 1922 — Section 26A

Citation : (1979) 10 CTR 310 : (1981) 128 ITR 659

Hon'ble Judges : Satish Chandra, C.J;M.B. Farooqi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—The assessee is a firm constituted under a deed of partnership dated 14th November, 1955. It consisted of nineteen partners. It was granted registration u/s 26A of the Indian I.T. Act, 1922, for the assessment year 1956-57. The registration was renewed thereafter up to the year 1959-60. Sri Narottam Das, one of the partners, died on 20th December, 1958, relevant for the assessment year 1960-61. For this year, the accounting period ended on 7th July, 1959.

2. The firm continued the business. It took the legal representatives of the deceased partner as partners of the firm. The firm applied for renewal of registration for the assessment year 1960-61 on 29th June, 1960. The ITO refused renewal. He held that on the death of a partner a change occurred in the constitution of the firm. No fresh deed of partnership having been executed the firm was not entitled to renewal of registration.

3. On appeal this view was reversed, but was again upheld by the Tribunal. At the instance of the assessee, the Tribunal has referred for our opinion the following questions of law ;

"1. Whether, on the facts and in the circumstances of the case, the assessee-firm was entitled to renewal of registration for the assessment year 1960-61 on the

basis of the partnership deed dated November 14, 1955, with particular reference to Clauses 12, 13 and 14 thereof when during the relevant accounting year one of the partners had died and a minor had orally been admitted to the benefits of partnership without executing a fresh deed of partnership ?

2. Whether in the alternative, the firm should have been allowed renewal of registration for the period up to the death of one of its partners, namely, Shri Narottam Das Tandon, on 20th December, 1958 ?"

4. The Tribunal had relied upon the decision of this court in C1T v. Wajid AH Abid Ali [1972] UPTC 532. When the reference came up before a Bench it felt that this decision needed reconsideration. The case was hence referred to a Full Bench.

5. The Full Bench has held* that on the facts of this case the original instrument was not entitled to be given the benefit of renewal of registration at the instance of the reconstituted firm. The first question referred to us is hence liable to be answered against the assessee.

6. The second question is whether, in the alternative, the firm should have been allowed renewal of registration for the period up to the death of the partner, namely, till 20th December, 1958.

7. Till this date, the firm, as originally "constituted, continued its business. It had been granted renewal of registration for a number of years on the basis of the same partnership deed.

8. The Full Bench* accepted the view taken in a Bench decision of this court in Commissioner of Income Tax Vs. Shiv Shanker Lal Ram Nath, . It held that, on reconstitution, the firm becomes a distinct assessable entity, different from the firm before its reconstitution. Therefore, two different assessment orders had to be passed against the reconstituted firm--one in respect of the income derived by it before reconstitution, and the other in respect of the income derived after reconstitution. The income derived by the old firm does not become the income of the reconstituted firm. It cannot be clubbed with the income of the reconstituted firm.

9. The position is that when a partner dies but the firm is not dissolved and the business is carried on, the constitution of the firm changes. A different assessable entity, namely, the reconstituted firm, comes into existence. The erstwhile firm continues its legal existence till the date of change in its constitution. Such a case is similar to a firm which discontinues business in the middle of the accounting period. It is liable to be assessed to tax for the period it continues doing business and earning income. In such a case renewal of registration cannot be refused merely because the firm has not lasted for the entire accounting period relevant to a particular assessment year. In a case where two assessable entities are in existence, they are both entitled to registration or renewal of registration if they fulfil the requirements of the relevant provisions. The erstwhile firm was being granted renewal of registration

year after year, and the position had not changed for the assessment year 1960-61 till 20th December, 1958, when that firm ceased to exist. The erstwhile firm being an assessable entity, liable to be assessed on its income up to the date of reconstitution, it would be entitled to renewal of registration also for the assessment year, till the time up to when it was liable to be assessed.

10. The capacity in which the reconstituted firm is assessed for the two different periods of the assessment year is different for the two periods. For the period in which the erstwhile firm was in existence, the reconstituted firm becomes assessable as a sort of a legal representative akin to a case covered by Section 159 of the I.T. Act. This is so, because the erstwhile firm is deemed to have died.

11. In COMMISSIONER OF Income Tax, CALCUTTA Vs. KEJRIWAL TRADERS., , K. L. Roy J., observed (p. 479):

"If the authorities below had granted registration to the firm as constituted under the instrument dated the 18th April, 1957, for the period 1st February to 30th September, 1957, there could not possibly be any objection. But in granting registration to the reconstituted firm for only a part of the accounting year, the Tribunal, in my opinion, has erred."

12. In that case reconstitution took place on 30th September, 1957. This, therefore, supports the view that the original instrument of partnership could be granted renewal of registration for the purpose of assessment of the erstwhile firm, for the period it existed.

13. Since the Full Bench has held that the original instrument of partnership did not evidence change in the constitution, the reconstituted firm was not entitled to renewal of registration on this basis for the period after reconstitution, and the first question is liable to be answered against the assessee. The second question is liable to be answered in favour of the assessee.

14. Learned counsel for the revenue has relied upon a Full Bench decision of the Andhra Pradesh High Court in The Additional Commissioner of Income Tax, (Andhra Pradesh, Hyderabad) Vs. Vinayaka Cinema, Nellore, and a decision of the Madras High Court in Kaithari Lungi Stores Vs. Commissioner of Income Tax, . We are, however, bound by previous decisions of this court. We are hence unable to accept the contrary view expressed, by the Andhra Pradesh and Madras High Courts.

15. We, therefore, answer the first question in the negative, in favour of the department and against the assessee, and the second question in the affirmative, in favour of the assessee and against the department.

16. In view of the divided success we make no order as to costs.