

(1993) 01 AHC CK 0038

In the Allahabad High Court

Case No : Income-tax Application No. 266 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Agra Wines

RESPONDENT

Date of Decision : 15-01-1993

Acts Referred:

Income Tax Act, 1961 — Section 185, 256
Partnership Act, 1932 — Section 4

Citation : (1993) 201 ITR 875 : (1993) 68 TAXMAN 327

Hon'ble Judges : V.P. Goel, J;R.K. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—Having heard learned counsel for the parties, we are not satisfied that the order of the Income Tax Appellate Tribunal gives rise to any statable question of law. The order passed by the Income Tax Appellate Tribunal is concluded by findings of fact. The question for consideration before the Tribunal was whether the Income Tax Officer rightly refused registration to the assessee-firm for the assessment year 1983-84 on the finding that no genuine firm had come into existence. The registration was refused on two grounds, namely, (i) that two of the lady partners had not contributed any capital, and (ii) that these partners were ignorant of the affairs of the firms. On appeal, the order of the Income Tax Officer did not find favour with the Commissioner of Income Tax (Appeals), who held that there was no legal requirement that every partner of a firm should contribute capital and merely because some partners were ignorant of certain affairs of the firm, was no ground to hold that a genuine firm was not in existence. The appellate authority found that the assessee-firm complied with all the requisite conditions for the grant of registration. There was actual division of profits and the proportionate share of each partner was credited in terms of partnership deed to his/her account. Not only that the partners had also operated their accounts. Further, the mere fact that two partners had actually controlled the business and the others had been dormant partners does not

invalidate the partnership agreement. In fact the assessment of two partners had also been completed taking their share from the firm as share from a registered firm. On further appeal, at the instance of the Revenue, to the Income Tax Appellate Tribunal, the order of the Commissioner (Appeals) was upheld.

2. Now the question whether there is a genuine firm in existence or not, is essentially a question of fact. We find no legal infirmity in the order of the Income Tax Appellate Tribunal when it held that, in the instant case, there was a genuine firm in existence. u/s 4 of the Indian Partnership Act, 1932, to constitute a partnership in law, it is necessary that there must be an agreement entered into by two or more persons, the agreement must be to share the profits of a business and the business must be carried on by all or any of those persons acting for all. It is not the requirement of law that the business should in fact be carried on only by all the partners and that all of them should participate in carrying on of the business. Likewise, law also does not require that every partner must contribute capital. The considerations on which the registration was refused by the Income Tax Officer, being unsustainable, the Income Tax Appellate Tribunal, in our opinion, was right in directing the grant of registration to the assessee-firm.

3. This application u/s 256(2) of the Income Tax Act, 1961, is without any substance and it is accordingly, rejected. The assessee shall be entitled to its costs which we assess at Rs. 200.