

(1999) 01 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : ITC No. 30 of 1998

Commissioner of Income Tax	Vs	APPELLANT
Arjun Das Surinder Kumar and Co.		RESPONDENT

Date of Decision : 21-01-1999

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(4), 185(1), 256(2)

Citation : (1999) 239 ITR 859

Hon'ble Judges : N.K. Agarwal, J;G.C. Garg, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant; K.L. Goyal and Shatin Aggarwal, for the Respondent

Judgement

N.K. Agrawal, J.—This is a petition by the CIT, under s. 256(2) of the IT Act, 1961 (for short, the "Act"), seeking a direction to the

Tribunal, Delhi (for short, the "Tribunal") to refer the following questions of law, relating to the asst. yr. 1985-86, to this Court for opinion :

1. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal is right in law in holding that it is a fit case in which registration

ought to have been granted ?

2. Whether on the facts and in the circumstances of case, the Hon''ble Tribunal is right in law in holding that the statements of partners recorded

under s. 132(4) of the IT Act cannot be used against the assessee while refusing registration under s. 185(1)(b) of the Act ?

2. Assessee-firm was dealer in country liquor. Application seeking registration of the firm was filed along with the partnership deed executed on

18th March, 1985. Nine partners were shown in the firm and the firm was shown to have come into existence on 2nd March, 1984. Search

operations were conducted at assessee's business premises. In the statement recorded under sub-s. (4) of s. 132 of the Act at the time of search.

Surinder Singh, one of the partners, admitted that he was made a partner of the firm by his father, Dalip Singh and that he did not know about the

affairs of the firm, his share in profit and loss and his investment in the firm. The AO took the view on the basis of that statement that Surinder Singh

was only a Benamidar of Dalip Singh. Statement of one Madan Lal was also recorded during search operations. He stated that he was a partner in

the firm along with Ami Lal, Sant Singh, Ramesh and Dharam Chand. The AO noticed from the partnership deed that Madan Lal and Ami Lal

were not shown therein as partners. He further noticed that the books of accounts were not maintained in the regular course of business and that

profits had not been distributed among the partners in accordance with the terms of partnership deed. He, therefore, refused to grant registration to

the firm on the ground that no genuine firm was in existence.

The CIT(A) upheld that order of the AO but the Tribunal, in further appeal filed by the assessee-firm, accepted the plea for the grant of

registration.

3. Shri R. P. Sawhney, learned senior counsel for the petitioner, has argued that questions of law do arise from the order of the Tribunal as the

statements recorded during the search operations under s. 132(4) of the Act were admissible in evidence against the assessee-firm. Reliance has

been placed on a decision of the Kerala High Court in V. Kunhambu and Sons Vs. Commissioner of Income Tax, . In that case, the question

under consideration was whether the authorised officer could record the statement on oath during search and seizure on all matters pertaining to the

suppressed income. After considering the Explanation to s. 132 of the Act, it was held that statements on all matters pertaining to the suppressed

income can be recorded.

4. It may be noticed that Explanation below sub-s. (4) of s. 132 was inserted w.e.f. 1st April, 1989. Therefore, the aforesaid decision on the said

Explanation is not relevant as the assessment year in the present case is 1985-86.

5. Shri Sawhney has further relied upon a decision of this Court in Commissioner of Income Tax Vs. Kanhayalal Ram Chand, . In that case, the

ITO had declined to register a sub-partnership after noticing that the amount of investment had not come from the person who was said to be a

partner. It was further seen that the person claiming to be a partner in the firm was an old man of 72 years and had retired from service long ago.

His bank pass-books were not produced. The share given to the said partner was disproportionate to his investment. He had never drawn his

share of profit from the firm. The dissolution deed was not produced. For these reasons, this Court upheld the order of the AO.

The aforesaid decision also does not help the petitioner inasmuch as the facts herein are entirely different.

6. Reliance has also been placed by Shri Sawhney on a decision of the Supreme Court in Commissioner of Income Tax, Ernakulam Vs. Managing

Trustee, Jalakhabai Trust, in support of his plea that this Court, at this stage, is not required to decide whether the question sought to be referred

may ultimately be decided in favour of the assessee. This Court has only to consider whether a question of law arises out of the order of the

Tribunal.

7. Shri K. L. Goyal, learned counsel for the assessee-respondent, has argued that the Tribunal, on appreciation of evidence, recorded a finding

that the statements of Surinder Singh and Madan Lal recorded in the summary proceedings during search could not be used without confronting

the assessee-firm with those statements. Further finding arrived at by the Tribunal is that the statement of Surinder Singh did not establish that he

was a "Benamidar" of his father, Dalip Singh. Surinder Singh had admitted that he was a partner. If he did not actively participate in the business

and did not know about its affairs or about his own investment or share, that would only show his ignorance. It would not make him a

"Benamidar". Madan Lal was not a partner. His statement without having been put in evidence before the assessee-firm could not be used against

the firm. It was necessary to confront the assessee-firm with the statement before drawing an adverse inference therefrom.

8. On a consideration of the matter, we are of the view that the Tribunal has recorded a finding of fact on the basis of the material on record. The

statement of Surinder Singh was seen by the Tribunal and it was noticed that he had admitted in clear terms that he was a partner. Similarly, the

statement of Madan Lal was also examined by the Tribunal and, on noticing that the assessee-firm was not confronted with that statement, the

Tribunal declined to use it against the firm for drawing an adverse inference therefrom. No referable question of law, therefore, arises from the

finding of fact arrived at by the Tribunal.

9. The petition has, therefore, no merit and is dismissed.