(1999) 01 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No. 30 of 1998

Commissioner of Income Tax — APPELLANT

Vs

Arjun Dass Surinder Kumar and Co. — RESPONDENT

Date of Decision : 21-01-1999

Acts Referred:
Income Tax Act, 1961 — Section 132, 185, 256(2)

Citation : (1999) 239 ITR 859

Hon'ble Judges : N.K. Agrawal, 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 Commissioner of Income Tax u/s 256(2) of the Income Tax Act, 1961 (for short the "Act"), seeking a direction to the Income Tax Appellate Tribunal, Delhi (for short, the "Tribunal"), to refer the following questions of law, relating to the assessment year 1985-86, to this court for opinion ;

"1. Whether, on the facts and in the circumstances of the case, the 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 the case, the Tribunal is right in law in holding that the statements of partners recorded u/s 132(4) of the Income Tax Act cannot be used against the assessee while refusing registration u/s 185(1)(b) of the Act ?"

2. The assessee-firm was a dealer in country liquor. An application seeking registration of the firm was filed along with the partnership deed executed on March 18, 1985. Nine partners were shown in the firm and the firm was shown to have come into existence on March 2, 1984. Search operations were conducted at the assessee''s business premises. In the statement recorded under Sub-

section (4) of Section 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 Assessing Officer 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 the search operations. He stated that he was a partner in the firm along with Ami Lal, Sant Singh, Ramesh and Dharam Chand. The Assessing Officer noticed from the partnership deed that Madan Lal and Ami Lal were not shown therein as partners. He further noticed that, the books of account 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 the partnership deed. He, therefore, refused to grant registration to the firm on the ground that no genuine firm was in existence.

3. The Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer but the Tribunal, in further appeal filed by the assessee-firm, accepted the plea for the grant of registration.

4. 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 u/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 Section 132 of the Act, it was held that statements on all matters pertaining to the suppressed income can be recorded.

5. It may be noticed that the Explanation below Sub-section (4) of Section 132 was inserted with effect from April 1, 1989. Therefore, the aforesaid decision on the said Explanation is not relevant as the assessment year in the present case is 1985-86.

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

7. The aforesaid decision also does not help the petitioner inasmuch as the facts

herein are entirely different.

8. 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.

9. 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 Madal 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.

10. 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.

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