
(1982) 09 AHC CK 0054

In the Allahabad High Court

Case No : Income-tax Reference No. 426 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Bajaj and Co.

RESPONDENT

Date of Decision : 10-09-1982

Acts Referred:

Income Tax Act, 1961 — Section 186(1)
Income Tax Rules, 1922 — Rule 6B
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Income Tax Rules, 1922 — Rule 6B

Citation : (1983) 32 CTR 177 : (1983) 143 ITR 218 : (1983) 12 TAXMAN 83

Hon'ble Judges : R.B. Lal, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; R.K. Gulati, for the Respondent

Final Decision : Disposed Off

Judgement

K.N. Seth, J.—The assessee, a partnership firm, was granted registration and benefit of continuance of registration up to the assessment year 1969-70. Its partners were Sri Vinod Kumar and Sri Rajan Bajaj; four minors, Rajiv, Sanjiv, Geeta and Meena, were admitted to the benefits of the partnership. For the assessment year 1970-71 also, of which the previous year ended on July 15, 1969, the firm was granted the benefit of continuance of registration. Subsequently, the ITO found that a change had taken place in the constitution of the firm inasmuch as Kumari . Geeta became major on January 7, 1969. He was, therefore, of the opinion that continuance of registration, which had been allowed to the firm, was erroneous. He issued a notice u/s 186(1) of the I.T. Act and, after hearing the assessee and obtaining the previous approval of the IAC, cancelled the registration. The assessee appealed to the AAC, who, relying on the decision of this court in Ram Narain Laxman Prasad Vs. Income Tax Officer, "D" Ward and Others, , upheld the order of the ITO. On appeal by the assessee, the

Appellate Tribunal took the view that the only ground on which a certificate of registration of firm once granted can be cancelled is that the certificate has been obtained without there being a genuine firm in existence. The mere fact that the instrument of partnership may not have existed during the accounting period relevant to the assessment year for which registration is granted, is not a ground for holding that no genuine firm was in existence. This view was based on the decision of this court in SHEONATH PRASAD MOTILAL Vs. Income Tax OFFICER, D-WARD, VARANASI., . The Tribunal accordingly set aside the order of the ITO cancelling the registration of the firm. At the instance of the Revenue the following question has been referred for the opinion of the court:

" Whether, on the facts and circumstances of the case, particularly when the genuineness of the firm was not doubted, on the ground that one of the minors admitted to the benefits of the partnership had become major during the previous year relevant to the assessment year 1970-71 and no fresh deed of partnership had been drawn up, action could have been taken u/s 186(1) of the Act for cancellation of the benefit of continuance of registration which had been granted to the assessee-firm for this year ? "

2. The stand taken by the Department was that since one of the partners became a major during the relevant previous year, a change had taken place in the constitution of the firm and a fresh deed of partnership should have been drawn up for registration. Since that was not done, continuance of registration of the firm was erroneous. There being no genuine firm in existence, an action u/s 186(1) was competent. We find no merit in the contention. The assertion that on a minor attaining majority a change takes place in the constitution of the firm and the firm must apply for fresh registration u/s 184(8) of the Act, is based on the view taken in GANESH LAL LAXMI NARAIN Vs. COMMISSIONER OF Income Tax [1968] 68 ITR 969 (ALL) TREATED AS OVERRULED BY THE FULL BENCH DECISION IN BADRI NARAIN KASHI PRASAD v. ADDL. COMMISSIONER OF Income Tax [1978] 115 ITR 858 (ALL) : SEE COMMISSIONER OF Income Tax v. BAJAJ and CO. [1983] 143 ITR 218 (ALL),, and Ram Narain Laxman Prasad Vs. Income Tax Officer, "D" Ward and Others, . These decisions have been overruled by a Full Bench of this court in BADRI NARAIN KASHI PRASAD Vs. ADDL. COMMISSIONER OF INCOME TAX. FANCY STORES v. COMMISSIONER OF INCOME TAX. R. C. GUPTA and SONS v. COMMISSIONER OF INCOME TAX. BENI PD. SIDGOPAL v. COMMISSIONER OF INCOME TAX., , It would, therefore, not be correct to say that as a consequence of a minor attaining majority a change in the constitution of the firm takes place and the firm must apply for fresh registration.

3. As found by the Tribunal the genuineness of the firm was not disputed at any stage. The question is whether recourse could be had to Section 186(1) of the Act for cancellation of the continuance of the registration granted to the firm. This question came up for consideration before this court in SHEONATH PRASAD MOTILAL Vs. Income Tax OFFICER, D-WARD, VARANASI., . In that case Rule 6B

of the Indian I.T. Rules, 1922, which was to the following effect, came up for consideration :

" 6B. In the event of the Income Tax officer being satisfied that the certificate granted under Rule 4, or under Rule 6A, has been obtained without there being a genuine firm in existence, he may cancel the certificate so granted. "

4. The learned single judge accepted the contention of the assessee that the mere fact that the instrument Of partnership may not have existed during the accounting period relevant to the assessment year for which registration is granted is not and cannot be a ground for holding that no genuine firm was in existence. It was observed (p. 495):

"The word "genuine" has to be contradistinguished from the word " bogus " or from the word " unreal". It is not the case of the Income Tax department that the petitioner-firm did not have the three partners which it is alleged that it had or that it had any other partner or that it was merely a faked name under which business was being carried on by some other person. If the case of the Income Tax department was based on any such fact it might have been possible to hold that the firm was not genuine. The mere fact that the instrument of partnership may not have been in existence during the relevant accounting period could be no ground for holding that the firm was not genuine. It is a different matter that initially a mistake might have been made by the Income Tax department for granting registration as no instrument of partnership was in existence during the relevant accounting year but the mistake, if any, could not be corrected by cancellation of the registration under Rule 6B for the very simple reason that the only ground upon which the registration can be cancelled is the non-existence of a genuine firm."

5. The language of Section 186(1) is similar to that of Rule 6B referred to above. Admittedly, during the relevant previous year, one of the partners admitted to the benefits of the partnership became a major. Even assuming that a change in the constitution took place, the genuineness of the firm was not at all affected. The mere fact that a fresh instrument of partnership was not brought into existence could not mean that a firm which was genuine ceased to be so. Since the registration could be cancelled only if there was during the previous year no genuine firm in existence, which was not the situation in the present case, the order of the ITO was rightly held to be erroneous and unsustainable.

6. Our answer to the question referred is in the negative, against the Department and in favour of the assessee. The assessee is entitled to costs which are assessed at Rs. 250.