(1997) 09 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 76 of 1983

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

BRIJ MOHAN SINGH and CO. — RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:
Income Tax Act, 1961 — Section 185, 256

Citation : (1998) 144 CTR 301

Hon'ble Judges : N. K. Agrawal, J

Bench : Division Bench

Judgement

N. K. AGRAWAL, J. :

The following question has been referred to this Court by the Tribunal under s. 256(1) of the IT Act, 1961 (for short, "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing registration to the assessee-firm ?"

2. The assessee-firm was engaged in the business of liquor. Application, seeking registration of the firm for the asst. yr. 1978-79 was filed in Form No. 12. The ITO noticed that there were 13 persons in the firm as partners and out of them 7 persons were not the licensees for the liquor vends. Contract for different liquor vends had been obtained by different persons and not by the firm. The licensees brought in some more persons to run the business and to exploit the licence. Renewal of registration was refused by the ITO on the ground that 7 partners of the firm were not the licensees entitled to run the business in liquor.

3. The CIT(A) dismissed the appeal filed by the assessee. The Tribunal however, allowed the assessees second appeal on the ground that there was no finding that the 7 partners whose names had not been entered in the licenses were ever engaged in the act of possessing or selling liquor.

4. The question which actually arises for consideration is whether registration can

be refused to a partnership firm under s. 185(1) of the IT Act on the ground that the person or persons holding licence to run a business in liquor had constituted such firm by adding more persons as partners without permission from the competent authority under the Punjab Excise Act and the rules framed thereunder.

5. A similar question was examined by this Court in CIT vs. Jagdish Chand Walia & Co. ITR No. 93 of 1984 decided on 29th September, 1997, [reported at (1998) 144 CTR 127] and it has been held that a partnership firm constituted by a licensee together with non-licensee partners to run a liquor business cannot be treated to be a genuine firm under s. 185(1) of the Act inasmuch as there was a breach of r. 7 of the Punjab Liquor Licence Rules, 1956.

Following the aforesaid view, the question is answered in the negative i.e., in favour of the Department and against the assessee.

