

(1987) 07 RAJ CK 0024

In the Rajasthan High Court

Case No : Income Tax Reference No. 4 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Chunilal

RESPONDENT

Date of Decision : 24-07-1987

Acts Referred:

Income Tax Act, 1961 — Section 185

Citation : (1987) 65 CTR 323 : (1988) 170 ITR 482 : (1987) 34 TAXMAN 163

Hon'ble Judges : J.S. Verma, C.J;Milap Chand Jain, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; N.M. Lodha, for the Respondent

Judgement

1. This reference u/s 256(1) of the Income Tax Act, 1961, (for short "the Act" hereinafter), is at the instance of the Revenue for deciding the following question of law, namely:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the assessee-firm was validly constituted and that it should be granted registration under the Income Tax Act, 1961 ?"

2. The relevant assessment year is 1973-74 corresponding to the financial year 1972-73. The assessee was a firm consisting of six partners constituted by an instrument of partnership executed on September 5, 1972. It derived income from sale of country liquor. A licence for sale of country liquor had been taken in the name of one of its partners, namely, Chunnilal Tak. According to the terms of the partnership, the business of selling country liquor under the said licence was to be treated as property of all the partners of this firm. It was also agreed between them that the management of the business in sale of country liquor was to be done by Chunnilal Tak while the other partners were permitted access to the account books. The firm applied for registration under the Act. The Income Tax Officer held that such a partnership for carrying on business in country liquor

was invalid since it was formed without the permission of the excise authorities in infringement of one of the conditions of the licence reading as under :

"The licence-holder shall not be entitled to transfer the licence of the shop to any person without written permission of the officer granting the licence and shall not be entitled to take a partner and such permission shall not be given till such time the licence-holder pays all dues outstanding against him."

3. The Income Tax Officer, therefore, refused registration to the firm.

4. The assessee appealed to the Appellate Assistant Commissioner who upheld the order of the Income Tax Officer. The assessee then went up in further appeal to the Tribunal. The Tribunal, following one of its earlier decisions, "reached the conclusion that formation of such a partnership even without permission of the excise authorities was not illegal. Accordingly, it directed registration of the firm under the Act. Aggrieved by this decision of the Tribunal, the Revenue applied for a reference to this court which has been made for deciding the abovequoted question of law.

5. The conclusion reached by the Tribunal in the present case is based on one of its earlier decisions. However, a Full Bench of this court in *Motilal Chunnilal Vs. Commissioner of Income Tax*, (I.T.R. No. 2 of 1976, decided on January 9, 1987) has taken a contrary view. It has been held, following the decisions of several other High Courts, that inclusion of new persons as partners who derive the benefit of excise licence for sale of country liquor without the permission of the excise authorities being opposed to public policy, renders the partnership illegal. On this basis, the Full Bench has held that the partnership firm not being validly constituted, the same is not entitled to registration u/s 185 of the Act. This is precisely the question for decision in the present case. Following the view held by the Full Bench, this reference is to be answered in favour of the Revenue and against the assessee.

6. Consequently, this reference is answered in favour of the Revenue as under:

The Tribunal was not justified in holding that the assessee-firm was validly constituted or that it could be granted registration u/s 185 of the Income Tax Act, 1961.

7. No costs.