
(1983) 06 MAD CK 0002

In the Madras High Court

Case No : Tax Case No. 140 of 1978 (Reference No. 98 of 1978)

Commissioner of Income Tax

APPELLANT

Vs

Ganesar Industries

RESPONDENT

Date of Decision : 20-06-1983

Acts Referred:

Income Tax Act, 1961 — Section 184, 185, 185(1), 263

Citation : (1984) 39 CTR 33 : (1984) 149 ITR 48

Hon'ble Judges : G. Ramanujam, J;Fakir Mohammed, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; R. Janakiraman, for the Respondent

Judgement

Ramanujam, J.—At the instance of the Revenue, the following question has been referred to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the assessee-firm was entitled to registration under the Income Tax Act, 1961, for the assessment year 1973-74 ?

2. The assessee was a firm of six partners. It was carrying on business in the manufacture of huller screens and was constituted under an instrument of partnership dated April 1, 1969. The above firm was granted registration under the I.T. Act, 1961, in respect of its Income Tax assessment for

the assessment year 1963-64 up to and inclusive of the assessment year 1972-73. During the previous year ended with March 31, 1973, relevant

to the assessment year 1973-74, one of the partners, Shri Arjundas Bulchand, died on November 19, 1972. The ITO by order dated March 11,

1974, granted registration to the assessee-firm for the assessment year 1973-74 under s. 185(1)(a) of the I.T. Act, 1961, observing as follows :

There has been a change in the constitution of the firm during the year. Although partner, Shri Arjundas Bulchand, passed away on November 19,

1972, as provided in one of the clauses of the partnership deed, the share of the deceased partner has been re-allocated among the remaining five

partners. However, no fresh deed of partnership was executed.....

3. Registration is granted to the firm for the assessment year 1973-74.

3. The Commissioner of Incometax, Tamil Nadu-V, invoking his power under s. 263 of the I.T. Act, issued a notice to the assessee to show cause

why the registration granted by the ITO should not be cancelled. As there was no response to the said notice, the Commissioner proceeded to

cancel the registration by an order dated March 9, 1976, on the ground that no fresh partnership deed was drawn up after the death of the partner,

Shri Arjundas Bulchand, on November 19, 1972, that even though a clause in the partnership deed provided for the contingency of the death of

any partner, still it could not be said that during the period in question, there was an instrument of partnership specifying the individual shares of the

partners and that as the important prerequisite for the grant of registration was not fulfilled, the assessee-firm was not entitled to the grant of

registration.

4. The assessee took the matter in appeal to the Income - tax Appellate Tribunal. The Tribunal found that under the instrument of partnership

drawn up on April 1, 1969, the profit sharing ratio has been specified in relation to each of the six partners and of the partners, Shri Arjundas

Bulchand, died on November 19, 1972, and his share of profit in the partnership will devolve on the surviving partners. As a result of the specific

clauses in the partnership deed, the firm does not stand dissolved by reason of the death of the partners as the clause specifically provided that the

firm shall not be dissolved on the death, retirement or bankruptcy of a partner and that the remaining partners shall continue and carry on the

business. The Tribunal also found that the share of the deceased partner would stand re-allocated as per the terms of the partnership deed among

the surviving five partners and, therefore, the partnership should be taken to specify the profit sharing ratio of each one of the remaining partners. In

this view, the Tribunal held that the assessee-firm is entitled to registration, as the shares of the surviving partners stand specified after the death of

the deceased partner, Shri Arjundas Bulchand. The question is whether the Tribunal has come to the right conclusion.

5. In this case, even the Commissioner concedes in his order that the firm did not stand dissolved on the death of one of the partners in view of the

specific clause in the partnership which provided that the firm shall not be dissolved on the death, retirement or bankruptcy of a partner and that the

remaining partners shall continue to carry on the business. The Commissioner also does not dispute the fact that there is a clause in the partnership

deed that the share of the deceased partner shall belong to the remaining partners. But, according to him that clause does not say in what

proportion the share of the deceased shall belong to the remaining partners and, therefore, a fresh firm should be reconstituted specifying the exact

share of each of the surviving partners and unless such a prerequisite is satisfied, the firm cannot be granted registration. But, we are of the view

that the Commissioner is in error in saying that the clause in the partnership deed "the share of the deceased..... shall belong to the remaining

partners" does not say in what proportion the share of the deceased shall be taken by the remaining partners. When the partnership deed says that

the share of the deceased shall belong to the remaining partners, it will only mean that the share of the deceased shall be taken equally by the

remaining partners. Only if varying shares are intended to be given to the remaining partners, then such varying shares are to be specified either in

the original partnership deed or in a fresh partnership deed. It is well established that if from the terms of the partnership deed the shares of the

partners could be clearly determined, the firm is entitled to registration. In this case, since the share of the deceased has to be taken by the

remaining partners, it should be taken that under the partnership deed, the remaining partners will be entitled to share equally the interest of the

deceased partner. Therefore, on the facts and in the circumstances of this case, no reconstitution of the firm is necessary so as to entitle the existing

firm to have registration. We are, therefore, in agreement with the view taken by the Tribunal in this case.

6. We may also refer to a decision of the Bombay High Court in Shivkisan Laxminarayan Jaju and Sons Vs. Commissioner of Income Tax, Poona,

, which dealt with a similar case. In that case, the original deed of partnership contained comprehensive provisions to provide for happening of

contingencies as a result of which either the partners may change or the individual shares may be altered. In such a case, constitution of the firm and the individual shares of the partners as specified in the instrument of partnership remain unaltered. Ever since the execution of the partnership, there has been no change in the terms thereof. In those circumstances, the court held that as such alteration either in the constitution of the firm or in the individual partners of the firm is specified in the initial instrument of partnership, which is registered, the certificate required to be set out in the application for renewal can be truthfully given by the partners making an application for such renewal. The court, therefore, held that the firm is entitled to registration notwithstanding the fact that there was no fresh partnership deed setting out the terms as varied. In the view we have taken, we answer the question referred to us in the affirmative and against the Revenue. The Revenue will pay the costs of the assessee. Counsel's fee Rs. 500.