
(1996) 01 RAJ CK 0022

In the Rajasthan High Court

Case No : Income Tax Reference No. 35 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Ganesh Talkies

RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:

Income Tax Act, 1961 — Section 143, 185

Citation : (1997) 226 ITR 487

Hon'ble Judges : A.P. Ravani, C.J.;D.C. Dalela, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; None, for the Respondent

Judgement

1. On the application of the Commissioner of Income Tax, Jodhpur, the Income Tax Appellate Tribunal has referred the following" question of law to this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment should have been completed in the status of a registered firm and in directing to grant registration to the firm, without recording a finding as to whether the income for the period belonged to an association of persons or the firm ?"

2. The statement of the case submitted by the Tribunal in brief is that the assessee in this case filed its return as a partnership firm and claimed registration u/s 185 of the Income Tax Act, hereinafter referred to as "the Act". The Income Tax Officer was, however, of the opinion that the firm having the same name as the assessee created by the partnership deed on April 30, 1978, was to continue till March 31, 1979, only. Thereafter, the co-owners of the cinema business continued to run the same during the relevant accounting year. The present partnership constituted by deed dated December 15, 1979, purported to have taken over the lease of the cinema hall including plant and machinery from the co-owners. No lease deed had been executed evidencing the agreement by the co-owners, In fact, there was a dispute between the co-

owners and the cinema remained closed for some time during the accounting year. On December 15, 1979, seven partners of the firm had forcibly taken possession of the cinema building and started running the same. According to the Income Tax Officer, the newly constituted firm was only a paper transaction and the business of the cinema was actually run by the co-owners jointly. He, therefore, took the status of the assessee to be that of an association of persons as a whole and refused to grant registration to the firm as applied for. The assessee carried the matter in second appeal before the Income Tax Appellate Tribunal, which was of the opinion that the Department could determine as to who was the rightful owner of the property. Since the Department had concluded that the assessee was not the owner of the property nor had it carried on the business, no assessment could be made on the assessee as such. However, an assessment had been made on the assessee as a protective measure in view of the fact that it had filed a return, a protective registration could also be granted to the assessee which could later be cancelled u/s 186, if so thought fit. Accordingly, the Tribunal, vide its order dated September 23, 1985, allowed the assessee's appeal with the direction that registration be granted to the assessee.

3. We have heard the arguments of Mr. Sandeep Bhandawat on behalf of the applicant, the Commissioner of Income Tax. None has appeared on behalf of the assessee-respondent.

4. The order of the learned Tribunal shows that the new partnership firm was constituted according to the appropriate provisions of the Partnership Act and all the requirements have been effected according to the requirements of the law.

5. According to the statement of the facts made by the Tribunal while making the reference, the new partnership firm forcibly took possession of the cinema and started running the same because some dispute between the co-owners arose. Thus, it is evident that the partnership firm did, in fact, carry on the business of cinema in the relevant year and merely because no lease deed has been executed for taking over the lease of the cinema, it does not mean that the firm did not run the business of cinema. The fact that the partnership firm filed a return showing the income from the business of cinema would prima facie indicate that in the relevant year, the business of the cinema was run by the partnership firm. Since the assessment had been made on the assessee (partnership firm) as a protective measure in view of the fact that it had filed the return, the Tribunal has rightly held that a protective registration could also be granted to the assessee which could later be cancelled u/s 186 of the Act.

6. In our opinion, in the facts and circumstances of the case, the Tribunal was justified in holding that the assessment should have been completed in the status of a registered firm and in directing to grant the registration to the firm without recording a finding as to whether the income for the period belonged to an association of persons or the firm because the firm forcibly took possession of the cinema building and started running cinema in the relevant year and it had filed a return and on the return, a protective assessment was made in the

capacity of partnership firm.

7. In the result, the reference is answered in the affirmative.

8. The registry is directed to send the copy of this judgment to the Tribunal and take action u/s 260(1) of the Income Tax Act. No order as to costs.