

(1957) 07 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 305 of 1955

Commissioner of Income Tax

APPELLANT

Vs

Gopal Rice Mills

RESPONDENT

Date of Decision : 22-07-1957

Acts Referred:

Income Tax Act, 1922 — Section 26A, 59, 59(2)
Partnership Act, 1932 — Section 4

Citation : AIR 1958 MP 292 : (1958) 34 ITR 548

Hon'ble Judges : M. Hidayatullah, C.J;B.K. Choudhuri, J

Bench : Division Bench

Advocate : M. Adhikari, for the Appellant; J.M. Thakkar and A.L. Halve, for the Respondent

Judgement

1. This is a reference u/s 66 (1) of the Indian Income Tax Act for the opinion or this Court on the following questions :

1. Whether on the true interpretation of the partnership deed dated 24th July, 1942, are the partners (1) Narsingdas, (2) Khubchand Amarsingh, (3) Ramanand Sadaram, and (4) Dulichand Laxminarayan; or are the partners Narsingdas and three other firms known as Khubchand Amarsingh, Ramanand Sadaram and Dulichand Laxminarayan?

2. If the answer to question No. 1 is that the partners were (1) Narsingdas, (2) Khubchand Amarsingh, (3) Ramanand Sadaram, and (4) Dulichand Laxminarayan, whether the defect in the application was a bar to the renewal of registration of the firm?

3. Whether on the facts of the case, the Income Tax Officer should have granted registration of the firm u/s 26-A of the Income Tax Act?

2. The facts of the case are as follows : In the year 1928 the respondent, Gopal Rice Mills, Kharsia, seems to have started business. In the record of the case we do not find who first constituted this firm. On 24th July, 1942 a deed of

partnership was executed, which is Annexure A. In that deed of partnership four persons were shown as constituting the firm styled as "Gopal Rice Mills, Kharsia".

In describing the executants of this deed, four persons were named who were respectively described as owners of four firms. In the operative part of the deed, each firm was shown as having 25 Naya Paisa share, and it was stated that the proprietor of each of these constituent firms would supply equal capital for the new firm. The proprietors of each constituent firm were also shown as liable for losses and entitled to any profit that might be made by the Mills.

In another portion of the deed it was stated that each "partner firm is entitled to receive profits". This deed was signed by all the four proprietors of the constituent firms, who described themselves as owners of these constituent firms. Registration of this deed was granted by the Income Tax Authorities; but in the year 1950, when the firms sought renewal of the registration, it was refused.

On appeal to the Appellate Tribunal at Bombay, that decision was reversed and the Income Tax Officer was directed to renew the registration. On the request of the Department the Appellate Tribunal has referred the three questions above-mentioned for the opinion of this Court.

3. In the application for renewal, which was made on 16th August, 1950, the names of the partners of the firm are shown. Three firms and one Narsingdas Agarwal are shown to have one-fourth share. Under the name of each of the three constituent firms names of partners are mentioned, but the shares of those partners are not separately specified. At the bottom of the application one finds ten signatures representing the eleven names, and it is stated that one Laxminarayan is a partner in two of the firms and has thus signed only once.

From this it appears that the application for renewal was signed by all the persons named in the application and who constituted the membership of the constituent firms as well as the membership of the registering firm. The Income Tax Officer in rejecting the application for registration expressed the opinion that there can be no partnership for the purposes of the registration of the firm u/s 26-A of the Income Tax Act between an individual and three firms, as the case is here.

He was also of the view that the particulars mentioned in the application did not comply with the requirements of the rules framed under the Act. He therefore declined to renew the registration and hence an appeal was taken to the Appellate Tribunal at Bombay.

4. The Appellate Tribunal came to the conclusion that the firm was a genuine firm, and that it consisted of only four persons who were the proprietors of the four constituent firms. According to the Tribunal, the deed of partnership executed in 1942 did not indicate that the four partners who had entered into that agreement or had signed it had done so in a representative capacity.

Accordingly the Tribunal was of the opinion that there were only four partners in the firm and that it did not matter if the constituent partner itself was a firm composed of more than one individual. The Tribunal further held that the only defect was that some more persons had signed the application than were entitled to, and, treating it as a surplusage, it thought that the defect was not fatal. Coming, therefore, to the conclusion that the genuineness of the firm was not in dispute, it ordered the registration of the deed.

5. The three questions which have been propounded for the opinion of this Court disclose the nature of the controversy between the parties. We have first to decide, in view of question No. 1, whether the constituent members of the firm "Gopal Rice Mills, Kharsia" were four individuals or one individual and three firms as the Income Tax Officer had previously held.

We may point out at this stage that the Supreme Court has laid down in *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, that no such partnership can be centered into under the Indian Partnership Act and no registration is open to such a firm under the Indian Income Tax Act. It is interesting that one of the partners in the firm which went before the Supreme Court is a partner in a firm which is before us. However, that is beside the point, because the membership of the firm which was challenging the decision of the High Court before the Supreme Court was quite different.

6. Starting, therefore, with the conclusion that under the Indian Partnership Act as well as the Indian Income Tax Act there can be no recognition of a firm composed of an individual and firms, we have to see whether in the present case the partnership is between an individual and three other firms. The application which has been made for renewal in 1950 discloses that the firms which seek to join Narsingdas, the individual, consist of many partners.

Shri Thakkar, however, says that the deed of which registration is sought only discloses four individuals and not four firms, though they may be described as proprietors of the firms and they may be receiving the profits to be used by their respective firms. In our opinion, this is not a fair reading of the deed.

The deed definitely mentions four distinct firms having one-fourth share in the now firm. In one part of the deed it is quite clearly stated that the partner-firms will be entitled to receive the profits. The subsequent events clearly show that the constituent firms which entered into an agreement in 1942 were not one-member firms but multiple-member firms.

In view of this, the decision of the Income Tax Officer was correct in all the circumstances of the case, and the contrary decision given by the Appellate Tribunal at Bombay was, with all due respect, erroneous. The Supreme Court case clinches the matter, and, indeed, the Supreme Court has done no more than affirm a decision of this Court given on two separate occasions.

7. Having reached this conclusion, we thought that there was nothing more in

the case; but Shri Thakkar raised a general question of law that renewal of a certificate is really not necessary and that the rules on the subject run counter to the provisions of Section 26-A of the Indian Income Tax Act. He referred us to Section 59 of the Indian Income Tax Act and said that the power to make rules of the kind made for renewal of certificates does not naturally flow from the terms of that section read with Section 26-A.

We do not agree. Section 26-A gives the power to prescribe "the times" when an application for a certificate should be made. The Central Board of Revenue, in exercise of that power read with the opening words of Section 59, has framed the rules and has indicated the times at which the application for registration should be made. The Board of Revenue has limited the duration of a certificate to one year and has stated that an application for registration shall be made each year before the 30th June of the assessment year (See rules 4, 5 and 6).

We think that the power to determine the times when the application for registration should be made postulates the power to require more than one application, and the word "renewal" is nothing more than a matter of convenience, so that the parties may not be driven to the making of new applications each time, as indeed the rules show they need not.

The rules require that in the case of a renewal the application need only refer to the first application made and ask for renewal. The word "renewal", therefore, is not of very sinister significance. It is a recurrent liability on the part of an assessee to get the firm registered for each assessment year, and this, in our opinion, flows naturally from the words of Section 26-A and the opening words of Section 59 read with Clause (e), of Sub-section (2) of Section 59.

The rules, therefore, in our opinion, are perfectly valid and, indeed, Rule 6-B, which is the consequential rule, was challenged before the Madras High Court and was upheld in *Y. Narayana Chetty and Others Vs. The Income Tax officer, Nellore, Main Circle, Nellore and Others*,

8. We must refer to a case of the Bombay High Court reported in *Commissioner of Income Tax, Bombay North Vs. Shantilal Vrajilal and Chandulal Dayalal and Co.*, which was brought to our notice. That case is easily distinguishable, because in that case the partners had entered into a fresh deed in which the individual members of the constituent firms had individually entered into a partnership in the new firm and had signed the deed as such and sought registration thereof. That is not the case here. In view of this, our answers to the questions posed are as follows :

Question (1) :

On a true interpretation of the partnership deed dated 24-7-1942, the partners of the firm *Gopal Rice Mills, Kharasia* are Narsingdas and three other firms known as "*Khubchand Amarsing*", "*Ramanand Sadaram*" and "*Dulichand Laxminarayan*."

Question (2) :

In view of our answer to question (1), the defect in the constitution of the firm was fatal to the renewal of the registration of the firm. Further, we are of opinion that the defect of not showing the shares of all the partners, viz. all those who had signed the renewal application was fatal. We may point out that such a defect was noticed by the Supreme Court along with another which does not exist in the present case.

Question (3) :

Our answer to this question is in the negative.

9. We do not think that in this case we should award costs to the applicant because the matter, when it was decided by the Tribunal was *res integra* and it ceased to be so only after the decision of the Supreme Court. It is probable that if the decision of the Supreme Court had been before the Tribunal, the result reached might have been different.