
(1984) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : Income Tax Case No's. 48 to 52 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Gulab Das

RESPONDENT

Date of Decision : 22-05-1984

Acts Referred:

Income Tax Act, 1961 — Section 184, 184(1), 256(2)

Citation : (1985) 47 CTR 195 : (1986) 159 ITR 24 : (1987) 30 TAXMAN 639

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; R. Mehta, for the Respondent

Judgement

S.K. Mal Lodha, J.—This order will dispose of the five applications u/s 256(2) of the Income Tax Act, 1961 (No. XLIII of 1961) (for short "the Act" hereinafter).

2. They relate to the assessment years 1972-73, 1973-74, 1974-75, 1976-77 and 1977-78. The Tribunal by a consolidated order dated March 16, 1983, allowed the five appeals filed by the assessee.

3. The Income Tax Officer by his order dated March 27, 1981, held the firm as not genuine for three reasons :

(i) that Smt. Rukmabai did not know anything about the business activities of the firm ;

(ii) that in the capital brought by Smt. Rukmabai, Shri Shyam Sunder Dhoot had vested interest and, therefore, it was in fact the capital of Shri Syam Sunder Dhoot himself and he could not enter into a valid partnership with her (Smt. Rukmabai) and the profits arising out of such investment belonged to Shri Shyam Sunder Dhoot :

(Hi) that the control and maintenance over the affairs of the firm was that of Shri Shyam Sunder Dhoot and ultimately all its profits as well as capital in the name of Smt. Rukmabai were in the names of the children of Shri Shyam Sander Dhoot.

4. Appeals were filed. The Appellate Assistant Commissioner by his order dated October 17, 1981, dismissed the appeals. The assessee went in further appeal to the Appellate Tribunal. After considering the material that was before it and the relevant provisions of law, the Appellate Tribunal reached the conclusion that the authorities below were not justified in cancelling the registration of the firm u/s 186(1) of the Act for all the assessment years under appeals. It, therefore, allowed the appeals. Thereafter, applications u/s 256(1) of the Act were filed by the Commissioner of Income Tax, Jodhpur, praying that the following questions of law arise out of the order of the Appellate Tribunal and that they may be referred for opinion to this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the amount of Rs. 50,000 brought by Smt. Rukmabai as capital in the partnership firm was held by her as her absolute property ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that Smt. Rukmabai and her son, Shri Shyam Sunder Dhoot, could constitute a legal and genuine partnership firm when the former had only a limited interest in the sum of Rs. 50,000 which she contributed as her share capital in the partnership firm and the latter had a vested interest in the same amount ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that Smt. Rukmabai was not a benamidar of Shri Shyam Sunder Dhoot in the case of M/s. Gulabdas Jagannath, Jodhpur ?"

5. The Appellate Tribunal rejected the five reference applications filed u/s 256(1) of the Act holding that no referable question of law arose out its consolidated order accepting the five appeals filed by the assessee-respondent.

6. The Appellate Tribunal in its order dated March 16, 1983, has held (i) that the property received by Shri Jagannath Dhoot formed the Hindu undivided family property consisting of Shri Jagannath and Smt. Rukmabai and on the death of the former, the latter became the absolute owner of this property as the only son, Shri Shyam Sunder Dhoot, has already separated from the Hindu undivided family; (ii) that contribution of capital is not essential for a valid partnership, "However, Smt. Rukmabai had brought her capital which was held to be her absolute property. That there is no bar for a son and mother becoming partners in a partnership firm and on the ground that it consisted of mother and son, it cannot be said that it is not a genuine partnership or that it was only a sham affair ; and (iii) as regards the management and control of the partnership business, it was held by the Appellate Tribunal that the affairs of the firm were so bad that even after taking into consideration the other assets owned by Smt. Rukmabai, the liability of the third parties could not be met. In view of the aforesaid conclusions, the order cancelling the registration of the firm u/s 186(1) was set aside.

7. The first question suggested by the Commissioner of Income Tax is with respect to the consideration in the form of capital for becoming a partner. The Appellate Assistant Commissioner held that non-contribution of capital by Smt. Rukmabai cannot render the firm invalid. The Revenue did not dispute this by filing any appeal or any cross-objection. The Appellate Tribunal stated in its order that in view of this, it is not open to the Revenue to raise this controversy again. However, the Appellate Tribunal did not stop at that and stated that it is settled that non-contribution of capital by a partner does not render the partnership invalid and so even if there was no contribution of capital by Smt. Rukmabai, it did not render the firm invalid. The question is merely of an academic nature and, therefore, it does not give rise to any question of law.

8. The second and the third questions suggested by the Commissioner of Income Tax are with respect to the genuineness of the firm and benami character of Smt. Rukmabai. We have gone through the order of the Appellate Tribunal dated March 16, 1983. While arriving at the aforesaid conclusions, the Tribunal has taken the relevant material and circumstances into consideration. The findings whether the firm is genuine or whether a particular transaction is benami or not are findings of fact until and unless they stand vitiated as being based on no evidence or on irrelevant and extraneous considerations. In the cases before us, the Appellate Tribunal has held that Smt. Rukmabai was not a benamidar of Shri Shyam Sunder Dhoot and that the partnership firm satisfies the conditions laid down u/s 184(1) of the Act for being registered. The following conditions are essential for the registration of a firm u/s 185 of the Act :

(i) on behalf of the firm, an application has been submitted to the Income Tax Officer before the end of the accounting year and that application should be in accordance with Section 184 and Rules 22 to 24;

(ii) the firm should be evidenced by an instrument of partnership;

(iii) the instrument should specify the shares of the partners.

(iv) the partnership should be valid and genuine and actually be constituted as specified in the instrument.

9. As the conditions were satisfied, the order of cancellation of the registration of the firm was set aside u/s 186(1) of the Act. In our opinion, the decision of the Tribunal as rendered in its consolidated order dated March 16, 1983, is correct and no referable question of law arises out of its order. The Tribunal has rightly rejected the application u/s 256(1) of the Act filed by the Commissioner of Income Tax in respect of the aforesaid five assessment years.

10. These applications u/s 256(2) of the Act fail and they are hereby dismissed.