(1971) 03 AHC CK 0030

In the Allahabad High Court

Case No : Miscellaneous Income Tax Reference No. 326 of 1965

Commissioner of Income Tax APPELLANT

Vs

Hari Om Co. RESPONDENT

Date of Decision : 18-03-1971

Acts Referred:

Companies Act, 1956 — Section 4
Income Tax Act, 1922 — Section 26A

Citation : (1972) 86 ITR 216

Hon'ble Judges : R.S. Pathak, J;H.N. Seth, J

Bench : Division Bench

Advocate : B.L. Gupta and R.R. Misra, for the Appellant; R.K. Gulati, for the Respondent

Judgement

H.N. Seth, J.—At the instance of the Commissioner of Income Tax, the Tribunal has referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the assessee-firm as constituted by the deed of partnership dated July 2, 1954, was entitled to registration u/s 26A of the Indian Income Tax Act,-1922?"

2. The assessee-firm applied for registration u/s 26A, Indian Income Tax Act, 1922, on the strength of a deed of partnership dated July 2, 1954. The deed of partnership indicated that 18 persons were entering into partnership. The Income Tax Officer found that some of these persons were partners in their individual capacity and certain others had entered into partnership as representatives of their Hindu undivided families and one party, Trijugi Narain, was a partner in a firm, M/s. Kalka Prasad Bhagwati Prasad. According to the Income Tax Officer, Trijugi Narain became a partner in the assessee-firm because of the investments made by the firm, M/s. Kalka Prasad Bhagwati Prasad. In the result, he came to the conclusion that the partnership was really between the members of various joint Hindu families and the partnership firm of Kalka Prasad Bhagwati Prasad and certain individuals. The total number of partners thus

exceeded 20 persons and as such the constitution of the firm was illegal, being contrary to Section 4 of the Indian Companies Act. In the result, he refused registration of the assessee-firm u/s 26A of the Income Tax Act.

3. The assessee went up in appeal. Before the Appellate Assistant Commissioner it was urged that the total number of partners was only 18 and as such the partnership was not contrary to law and the assessee was entitled to registration. The Appellate Assistant Commissioner accepted the contention raised by the assessee. He allowed the appeal and directed the Income Tax Officer to grant registration.

4. The Income Tax Officer then went up in appeal before the Appellate Tribunal. The Appellate Tribunal found that each of the 18 persons had signed the deed in their own individual capacity and that there was nothing in the partnership deed to show that any partner was acting on behalf of anybody else or in a representative capacity. Clause (9) of the deed in question expressly provided that the partners had joined the firm in their individual capacity. Clause (17) of the deed provided that the death or retirement of any partner was not to result in the dissolution of the firm. Taking into consideration the entire circumstances of the case, the Tribunal came to the conclusion that as the number of partners was 18, the partnership deed did not contravene the provisions of the Indian Companies Act and the assessee was entitled to registration. The Commissioner of Income Tax then made an application to the Tribunal and at his instance the question mentioned above has been referred to this court.

5. In the case of Agarwal and Co. Vs. Commissioner of Income Tax, Uttar Pradesh, . the Supreme Court has held that for the purpose of finding out who are the partners of a firm, one has only to look to the partnership deed and not to go behind it. If the partnership deed shows that the partners have entered into partnership in their individual capacity and there is nothing to indicate that they have done so as kartas of their respective joint Hindu families it is not open to the Income Tax Officer to go behind the deed and find out, for the purpose of registration u/s 26A of the Indian Income Tax Act, 1922, whether the partners have joined the partnership in their own right or as representing their families, and to refuse registration on the ground that the total number of the partners and the adult coparceners of the joint families would exceed 20.

6. In the present case there is a clear finding of the Tribunal that there is nothing in the partnership deed to indicate that any of the partners entered into partnership as karta of any undivided family or in a representative capacity. The deed specifically provided that all the partners were entering into the partnership agreement in their individual capacity. In the circumstances, it was not open to the Income Tax Officer to go behind the recitals made in the partnership deed and to hold that the agreement had been entered into by several of the partners in their capacity as kartas of their respective joint Hindu families. As only 18 persons had entered into an agreement of partnership in their individual capacity, the partnership agreement did not contravene the proviso to Section 4

of the Indian Companies Act. The Tribunal was, therefore, right in holding that the registration could not be refused to the assessee on the ground that the partnership was illegal.

7. In the result, we answer the question referred to us in the affirmative and in favour of the assessee. The assessee is entitled to his costs which we assess at Rs. 200. Counsel''s fee is also assessed at the same figure.

