
(1978) 01 AHC CK 0074

In the Allahabad High Court

Case No : Income-tax Reference No. 469 of 1973

Commissioner of Income Tax

APPELLANT

Vs

Hari Ram Khanna

RESPONDENT

Date of Decision : 04-01-1978

Acts Referred:

Income Tax Act, 1961 — Section 185

Citation : (1979) 116 ITR 886

Hon'ble Judges : Satish Chandra, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This reference relates to the assessment years 1962-63 and 1963-64. The assessee-firm originally carried on business in the status of a HUF. On October 18, 1960, a partial partition took place between the coparceners. The business conducted by the HUF was taken over by a firm consisting of Hari Ram Khanna and his two sons, Tilak Raj and Sudarshan Kumar. The firm was constituted under a deed of partnership dated October 19, 1960. It disclosed that the share of Hari Ram was six annas and those of his two sons five annas each. The claim of partial partition was accepted by the ITO by an order dated August 18, 1966. For the assessment year 1962-63, the assessee-firm was granted registration. Subsequently, the CIT passed an order u/s 263 setting aside the assessment of the firm in the status of a partnership firm and directed the ITO to make the assessment afresh. The Commissioner found that though the application for registration was made in the proper form and within time, yet actually the division of share of the profits was not made in accordance with the division of profit indicated in the partnership deed. The deviation was that Hari Ram Khanna instead of getting six annas and his two sons getting five annas each, they were given equal shares, that is to say, the two sons got 5-1/3 instead of 5 annas each. The Commissioner did not accept the assessee's

submission that the distribution of the book profits had been inadvertently made by the accountant. Considering all the circumstances, the Commissioner came to the conclusion that the firm was not genuine and so was not entitled to registration.

2. In response to this directive, the ITO cancelled the registration of the firm. He passed another order for the assessment year 1963-64 refusing registration. He assessed the firm in the status of an association of persons.

The assessee went up in appeal. The AAC upheld the orders and dismissed the appeal.

3. The assessee then went up to the Tribunal. The Tribunal held that the firm was a genuine one, its partners were also genuine, the application for registration was made on a proper form and within the required period of time and complied with all the formalities. When the application was made the profits of the year had not been distributed in the books and in the application it was stated that the profits would be distributed according to the specification of shares in the partnership deed. It found that in the books a slight deviation was made inasmuch as the father instead of getting six annas and the two sons five annas each they were given equal shares. The Tribunal then found :

"Such a mistake could have been committed by the accountant inadvertently because the partners were the father and his two sons and ordinarily one can think that they would have equal shares."

4. It emphasizes that this deviation occurred subsequent to the making of the application. It expressed the opinion that even this minor irregularity could have been covered by imposition of penalty u/s 271(4) of the Act and, therefore, it was not a case where registration could validly be refused on the finding that the firm is not genuine. The appeals were allowed.

5. At the instance of the Commissioner, the Tribunal has referred the following question of law for our opinion:

"Whether, on the facts and in the circumstances of the case, registration u/s 185 of the I.T. Act, 1961, for the assessment years 1962-63 and 1963-64 could be granted to the assessee-firm ?"

6. The facts are not in dispute. The application for registration was made in time and in the proper form. It complied with all the requisite formalities including the declaration which is required to be made that the profits of the firm will be divided or credited as shown below, namely, in accordance with the shares specified in the partnership deed. The factual findings of the Tribunal show that at the time when the application was made a proper declaration that the shares of profits will be distributed in accordance with the shares indicated in the partnership deed was duly made. The deviation occurred subsequently and it was because of the inadvertent fault of the accountant. On an overall consideration of all the facts, the Tribunal came to the conclusion that it cannot be said that the

firm was not genuine. In our opinion, the deviation was negligible inasmuch as the father was credited with 5-1/3 annas share instead of six annas and the same mistake occurred in the case of the two sons, namely, instead of five annas they were credited with 5-1/3 annas. We are not satisfied that the Tribunal committed an error in coming to the factual conclusion that in spite of this minor, deviation in the crediting of the share of the profits the genuineness of the firm was doubtful (sic). On this view, the decision of the Supreme Court in *Khanjan Lal Sewak Ram Vs. Commissioner of Income Tax, U.P.*, becomes clearly distinguishable. In that case, a portion of the profits were not divided amongst the partners at all. The division of shares took place before the application for registration was made and the declaration given that the shares had been divided in accordance with the partnership deed was found to be false. In this view, it was held that para. 3 of Rule 6 was clearly violated and hence the ITO was justified in refusing registration. The distinguishing features are that in the present case the distribution of profits had not taken place at all when the application for registration was made and the explanation for the irregularity, if any, was, on facts, found believable by the Tribunal.

7. On the facts and in the circumstances of the case, we are satisfied that the assessee-firm was entitled to registration. We, therefore, answer the question referred to us in the affirmative, in favour of the assessee and against the department. As the assessee has not appeared, there will be no order as to costs. The fee of the counsel for the department is assessed at Rs. 200.