

(1997) 09 P&H CK 0146
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No"s. 74 to 79 of 1984

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

INDER SINGH.

RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 143, 186, 256

Citation : (1998) 145 CTR 87

Hon'ble Judges : N. K. Agrawal, J

Bench : Division Bench

Judgement

N. K. AGRAWAL, J. :

The following common question of law has been referred to this Court by the Tribunal under s. 256(1) of the IT Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the firm was validly constituted keeping in view the provisions of Punjab State Excise Act/Rules and was entitled to registration/benefit of continuance of registration for the asst. yrs. 1976-77 to 1981-82 ?"

2. The assessee-firm sold Indian made foreign liquor as L-II licensee. Assessment had been completed for the asst. yrs. 1976-77 to 1981-82 under s. 143(1) of the IT Act. The AO, after decision of this Court in Commissioner of Income Tax Vs. Hardit Singh Pal Chand and Co., , issued notices to the assessee to show cause as to why registration to the partnership firm be not cancelled under s. 186 of the IT Act. Registration had been granted to the firm on 26th December, 1977 on the basis of the partnership deed executed on 1st April, 1977. It was noticed by the ITO that there were 5 partners in the firm whereas L-II licence had been granted in the individual name of one partner, Inder Singh, only. The AO therefore took the view that the partnership firm was constituted against the provisions of the Punjab Excise Act and the rules framed thereunder because 4 partners were taken in the firm in violation of the said Act and the

rules.

The AAC set aside the order of the ITO and remanded the matter for all the years with a direction to find out if the partners other than the licensee, Inder Singh, handled the liquor business on account of which the partnership could be said to be illegal.

The Tribunal in Revenues appeal upheld the order of the AAC and further directed the ITO to take into consideration the guidelines laid down by the Tribunal in the case of Jagdish Rai Monga.

3. The non-licensee partners had entered the partnership firm without the approval from the concerned excise authority. No person is allowed to sell liquor unless his name is endorsed on the liquor licence.

4. The question which arises for determination is whether it is permissible to an individual who holds a liquor licence in his individual name to add a new person to his business as a partner whose name is not entered in the licence. Similarly, is it permissible for a group of persons or partners of a firm holding a liquor licence or licences to add a new person or a partner to their business or firm without the permission of the competent licensing authority. If such a firm is constituted or reconstituted, can it be denied registration on the ground that it is not a genuine firm under the IT Act.

5. A similar question was examined by this Court in CIT vs. Jagdish Chand Walia & Co. ITR No. 93 of 1984 decided on 29th September, 1997 [reported at (1998) 144 CTR 127], and it has been held that a partnership firm constituted by a licensee together with non-licensee partners to run a liquor business is not to be treated to be a genuine firm inasmuch as there was a violation of the Punjab Excise Act and the rules framed thereunder.

Following the aforesaid view, the question is answered in the negative i.e. in favour of the Department and against the assessee.