

(1984) 08 KAR CK 0022
In the Karnataka High Court
Case No : Income Tax R.C. No. 187 OF 1979

Commissioner of Income Tax

APPELLANT

Vs

Janatha Textiles

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Income Tax Act, 1961 — Section 184 (7), 187, 256 (1)

Citation : (1987) 163 ITR 731

Hon'ble Judges : S.A. Hakeem, J; Mohammad Sharif, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; G. Sarangan, for the Respondent

Judgement

Jagannatha Shetty, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961. The Tribunal (Bangalore Bench) has referred the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the firm constituted by the deed dated January 8, 1969, was entitled to continuation of registration for assessment year 1974-75 ?"

2. Under a deed of partnership dated January 8, 1969, five partners carried on textile business at No. 160, Chickpet, Bangalore. This firm was following the year 1971-72 to 1973-74. This firm was following the year ending Diwali as the accounting year and the accounting year for the assessment year 1974-75 ended on October 26, 1973, on Diwali day. On September 22, 1973, one of the partners left the firm. He was a lessee of the premises where the firm carried on business. The firm was evicted from that premises with effect from September 29, 1973. The firm was thus left with no business premises. It was inevitably dissolved with effect from September 30, 1973, with distribution of the assets and liabilities and closing of the books of account.

3. By a deed dated November 1, 1973, four of the remaining partners along with two other persons agreed to carry on similar business in new premises at No. 725, Chickpet, Bangalore. This deed of partnership states that the partnership

shall commence on and from September 30, 1973, but in fact, the business of the new partnership could not be carried on till November 2, 1973.

4. For the assessment year 1974-75, the application in Form No. 12 was filed along with the return of income on June 29, 1974, for continuation of the registration of the old firm. The firm another application in Form No. 11A for fresh registration. The Income Tax Officer made the assessment by adopting the status as that of a registered firm for the assessment year 1974-75.

5. On going through the records, the Commissioner found that there were certain discrepancies in the stand taken by the assessee as to the registration of the firm. After hearing the assessee, he made an order directing the Income Tax Officer to treat the assessee-firm as an unregistered firm for the assessment year 1974-75. He was of the opinion that having regard to the facts, the assessee could not have filed a declaration u/s 184(7) in Form No. 12. He also noted the discrepancies in the new deed of partnership and held that the Income Tax Officer's action in continuing the registration was erroneous.

6. The assessee appealed to the Tribunal against the order of the Commissioner contending, inter alia, that the old firm was completely dissolved and the new firm had nothing to do with the old firm and discrepancies in the new deed of partnership were due to clerical mistakes. The Tribunal agreed with those contentions and recorded its finding as follows :

"...Factually, therefore, the firm of 1969 whose genuineness was never questioned by the Department was brought to a close on September 29, 1973, for reasons entirely outside the assessee's control. A legally valid dissolution deed has also been drawn up on this date. The firm in existence prior to this date had the previous year ending on 26th October, 1973. When the firm was dissolved on September 29, 1973, and the partnership came to an end, certainly the previous year also should have ended on September 29, 1973, and could not continue beyond that. As a matter of fact and in law, therefore, the previous year of the dissolved firm of 1969 would be the year ending September 29, 1973, on which date the books of account have been closed and profits and assets distributed among the partners. With the data as above, it is irresistible to note that the old firm had been completely dissolved and brought to a close. There is no evidence of any business after September 29, 1973, done by the old firm, nor even by the alleged new firm brought into existence in a separate place, whether in September, 1973, October, 1973, or November, 1973. The old firm has filed an application for continuation of registration along with the return in Form No. 12. In view of the factual position as above, the division of assets at market value, the separation of the partner, deprivation of the place of business, closing of the accounts, etc., it is clear that the old firm has been completely dissolved. Subsequently for a period there was no business nor any firm. There can, therefore, be no question of any firm being succeeded by another firm with a change in constitution or otherwise. The case of the Department that there was a mere change in constitution and that the firm continued in a new place with

different partners has no factual or legal basis."

7. With regard to the discrepancies in the new deed of partnership, the Tribunal observed that those discrepancies would not in any way affect the fortunes of the already dissolved firm of 1969, especially when there was no business carried on for three months in the interregnum. It also held that even if the new firm had filed an application in Form No. 11A, it would not be proper or legally correct to impose its liability on the partners of the dissolved firm.

8. The view taken by the Tribunal has been seriously challenged by Mr. Srinivasan, learned counsel for the Revenue. He relied upon the two decisions of this court : (1) in Commissioner of Income Tax, Karnataka-I Vs. Shambulal Nathalal and Company, and (2) Commissioner of Income Tax, Karnataka (Central) Vs. Sree Durga Enterprises, . The principle laid down in these two decisions is that if the dissolution of a firm is followed by constitution of a new firm with at least one common partner and the new firm takes over the assets and liabilities of the dissolved firm, then it would be a case falling u/s 187. But the facts of the present case do not warrant the application of the rule laid down in those two decisions. The old firm which commenced its business on January 8, 1969, was dissolved and the assets and liabilities were distributed amongst the new partners. The dissolution of the firm was necessitated for want of a business premises since the firm was thrown out of its business premises. The business was thus brought to a close with effect from September 29, 1973. The newly constituted firm could not commence its business from September 30, 1973. It had to search for a new premises. It was found as a fact that it could not do any business from September 29, 1973, to November 2, 1973.

9. There is thus no evidence of any business carried on after September 29, 1973, till November 2, 1973. These peculiar facts amply justify the conclusion of the Tribunal for continuation of registration of the firm of the assessment year 1974-75.

10. In result, we answer the question in the affirmative and against the Revenue.