
(2004) 02 MP CK 0037
In the Madhya Pradesh High Court
Case No : IT Ref. No. 100 of 1997

Commissioner of Income Tax

APPELLANT

Vs

Kale Khan Mohammad Hanif

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

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

Citation : (2004) 189 CTR 187 : (2004) 270 ITR 62

Hon'ble Judges : Kumar Rajaratnam, C.J.; Shantanu Kemkar, J

Bench : Division Bench

Advocate : Rohit Arya, for the Appellant; Sumit Nema, for the Respondent

Judgement

Kumar Rajaratnam, C.J.—This is a reference filed by the Revenue u/s 256(2) of the IT Act.

2. The facts very briefly are that the assessee/non-applicant filed a return for the year 1987-88 on a total income of Rs. 1,82,530 claiming the status of firm. The AO in the assessment proceedings u/s 185(1)(b) of the IT Act, 1961 treated the firm to be unregistered firm on the ground that the profits were not distributed in accordance with the terms of the partnership deed. It was also noticed by the AO that there was some inter-knitting dispute between the partners. The assessment order is before us at Annex. P/1.

3. In the appeal filed by the assessee, the appellate authority set aside the order of the ITO and held that the firm is a registered firm. The order of the appellate authority is before us at Annex. P/2.

4. The Revenue felt aggrieved and filed an appeal before the Tribunal. The Tribunal dismissed the appeal by order dt. 24th July, 1996 (Annex. P/3). It is in these circumstances the applicant Revenue has preferred this reference.

5. The question before us is :

Whether, on the facts and in the circumstances of the case, the Tribunal was

justified in law to uphold the order of CIT(A) allowing registration to the appellant firm without appreciating the facts that profit was not distributed in accordance with Clause 4 of the partnership deed?

6. The appellate authority has considered the whole aspect and has given its finding at para 7 which reads as follows:

"I have carefully considered the submissions of the learned counsel and the order of the learned Dy. CIT (Asstt.). Admittedly, Sh. Mohd. Iqbal, Sh. Mazhar Khan, Sh. Mohd. Ashraj entered into an agreement of partnership, which was duly registered with the Registrar of Firms, Bhopal. Clause (4) of the partnership deed has clearly provided for distribution of shares in profits and losses amongst the partners. The firm earned profits of Rs. 1,82,530. A deed of partnership dt. 3rd Aug., 1979, wherein Sh. Mohd. Iqbal was partner in the firm named and styled as "M/s Kale Khan Mohd. Hanif, Bhopal". The possibility that Sh. Mohd. Iqbal could have share of goodwill and trade-mark in the old firm cannot altogether be brushed aside. I have also the benefit of going through the literal English translation of the order of the learned Judge, it is apparent from his order (supra) that both the parties were contesting that they were owners of goodwill and trade-mark. It has to be noted here that the order of the learned Judge is an interim order and the suit is still pending before the Court for final decision."

7. The order of the Tribunal at Annex, P/3 clearly indicates that the partnership deed executed by the partners is genuine and the existence of the partners is also not in dispute. The fact that the firm is carrying on business is also not in dispute. The deed contains a clause for distribution of profits. Any interim order by the Court does not prevent the assessee from carrying on trade but only directed the partners to keep the proper accounts. The civil Court also suspended the distribution of profits by way of an interim order.

8. The Tribunal held that the whole basis of the assessing authority in refusing to register the firm was because of an interim order with respect to rendition of accounts. There was no bar by the civil Court for the firm to carry on business in terms of the partnership deed. Taking all these facts into account, the Tribunal dismissed the appeal.

9. A larger question that arises for consideration is whether a factual finding can be interfered with in the present IT reference. We are of the view that the factual position affirmed by the appellate authority and by the Tribunal does not call for interference at our hands.

10. In Commissioner of Income Tax Vs. Agrawal Refrigeration, the Allahabad High Court held that if the Tribunal holds that the firm is a genuine firm, and an honest mistake rectified would not disentitle the firm for registration under the provisions of the Act. This Court in CIT v. Digvijay Traders, held that in similar situation, such a question of fact is not referable because no question of law was involved in the reference. In Commissioner of Income Tax Vs. Khanna Theatre, it was held that under the provisions of the IT Rules, 1962, prior distribution of

profits and losses among the partners is not compulsory for entitlement of the firm to registration but a certificate that they "will be" divided or credited in future to the accounts of the partners will be sufficient compliance with the rules for grant of registration.

11. We do not think any question of law is involved in this reference, much less a serious question of law. Accordingly, the reference stands dismissed. There will be no order as to costs.