(1985) 10 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : IT Case No. 3 of 1978 & Income-tax Case No. 3 of 1978

Commissioner of Income Tax APPELLANT

Vs

Mittal Engineering Co. RESPONDENT

Date of Decision : 09-10-1985

Acts Referred:

Income Tax Act, 1961 — Section 185(1), 256, 256(1)
Partnership Act, 1932 — Section 4

Citation : (1987) 163 ITR 415

Hon'ble Judges : S.P. Goyal, J;D.V. Sehgal, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; D.K. Gupta and Hemant Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Goyal, J.—The alleged assessee claimed registration of the firm, M/S. Mittal Engineering Co., for the assessment year 1973-74 on the basis of the partnership deed dated September 24, 1972. The firm consisted of seven members two of whom were minors and two were ladies. The minors were stated to have been admitted to the benefits of the partnership and the ladies were described as sleeping partners. Both these sets of partners neither contributed any personal skill nor capital. On these facts, the income tax Officer held that the said partners were benamidars of Shri Nikka Ram and declined registration. This order having been affirmed by the Appellate Assistant Commissioner, they approached the Tribunal. Their appeal was allowed and reversing the finding that the ladies and minor partners were only benamidars, the case was remanded for framing an assessment after granting registration. The application of the Revenue u/s 256(1) of the income tax Act, 1961 (for short "the Act"), having been declined, this petition has been filed under sub-section (2) of section 256 of the Act for a mandamus requiring the Tribunal to refer the following three questions to this court:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has misdirected itself in law in holding that though admittedly the lady partners and the minors admitted to the benefits of the partnership had made no capital investment in the firm nor had they made any contribution of skill or labour, there was a valid partnership dated September 24,1972?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that Explanation to section 185(1) of the income tax Act, 1961, is not attracted to this case?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in directing the income tax Officer to grant registration to the assessee-firm for the assessment year 1973-74?

Although question No. 1 is a question of law, it stands concluded by the decision of the Supreme Court in K.D. Kamath and Co. Vs. Commissioner of Income Tax, Mysore, , wherein it was held that the legal requirement u/s 4 of the Partnership Act to constitute a partnership in law is that there must be an agreement to share the profits or losses of the business; and the business must be carried on by all the partners or any of them acting for all.

2. So far as question No. 2 is concerned, the Tribunal held that Explanation to section 185(1) of the Act was not attracted as the said partners were not proved to be benamidars of Nikka Ram. The finding is thus based on a pure question of fact and does not involve the determination of any question of law. The third question admittedly is only a consequential one and dependent on the answer to question No. 1. As question No. 1 stands concluded by the above mentioned judgment of the Supreme Court, this petition has to be dismissed and we order accordingly. No costs.

