(1984) 11 AP CK 0009

In the Andhra Pradesh High Court

Case No : Case Referred No. 134 of 1978

Commissioner of Income Tax APPELLANT

Vs

M.V. Krishnaiah RESPONDENT

Date of Decision : 09-11-1984

Acts Referred:
Income Tax Act, 1961 — Section 184, 184(1)(i), 184(4), 184(7), 185

Citation : (1985) 21 TAXMAN 88

Hon'ble Judges : Upendralal Waghray, J;P.A. Choudary, J

Bench : Division Bench

Advocate : M.S.N. Murthy, for the Appellant; J.V. Srinivasa Rao, for the Respondent

Judgement

Upendralal Waghray, J.—This is a reference u/s 256(1) of the income tax Act, 1961 (''the Act'') made at the instance of the revenue by the Tribunal, in which the following question is referred for the opinion of this Court: "Whether, on the facts and in the circumstances of the case, the entries in the day book on 4-8-1973 coupled with partnership deed dated 16-12-1970 would constitute instrument of partnership as required u/s 184 of the income tax Act, 1961?"

The facts necessary for appreciating the contentions of the parties are as follows: By a deed of partnership dated 16-12-1970, four partners were carrying on business. The accounts of the firm are to be closed by the end of December each year, that is, the accounting year is the calendar year. The partnership was registered under the provisions of the Indian Partnership Act, 1932, and registration was also granted by the ITO u/s 185 of the Act. The firm continued to carry on business and, while so, on 3-8-1973 one of the partners by name Aswarthanarayanaiah died. He left a will by which he directed that his three daughters were to step in his shoes as partners in terms of clauses 7 and 8 of the partnership deed. The said clauses of the partnership deed are as follows:

" 7. It is decided that in the event of the sudden death of any partner or in the event of any partner supplying to adjudge him as an insolvent the firm should not be closed but, on the other hand, it should be continued up to the end of that year ending with 31st December and then the profits and losses should be arrived at up to that period;

8. It is decided to permit to join the firm again the legal representative of such deceased partner as partner provided all the partners give consent therefor."

2. On 4-8-1973 in the day book of the firm the following entries were made

"To M. Aswarthanarayanaiah Account

Dr.

Cr.

According to your will dated 27-7-1973, your capital of Rs. 92,770.77 in your account duly crediting to your daughters'' accounts in this firm, M. Aswarthanarayanaiah died on 3-8-1973 and as per clauses 7 and 8 of the partnership deed dated 16-12-1970 and by the will his heirs, i.e., daughters,

92,770.77

(i) Sakuntalamma (1/3rd of 25 per cent of M. Aswarthanarayanaiah)

(ii) Annapurnamma (1/3rd of 25 per cent of M. Aswarthanarayanaiah)

(iii) Sobha Devi (l/3rd of 25 per cent of M. Aswarthanarayanaiah)

are admitted today (4-8-1983) as partners."

The remaining three partners as well as the three daughters of the deceased and two witnesses have signed at the foot of the said entry. On 22-8-1973, information was sent to the registrar of firms intimating the death of the deceased and that his three daughters are admitted into partnership and would continue as partners up to 31-12-1975. A return was filed by the assessee-firm on 2-8-1974 together with Form No. 12 under rule 24 of the income tax Rules, 1962 (''the Rules'') for the entire calendar year 1973 relevant for the assessment year 1974-75. In the declaration under the said Form No. 12 it is mentioned that there was no change in the constitution of the firm till 3-8-1973, that is, the date of death of the partner. The declaration was signed by the surviving partners and the three daughters. When the assessment proceedings were taken up in October 1974, the assessee came forward with two returns, one for the period 1-1-1973 to 3-8-1973 and the other for the period 4-8-1973 to 31-12-1973 on the ground that the firm stood dissolved on the death of the said partner and that a new firm came into being from 4-8-1973. The assessee made a request to the ITO that it should be treated as a registered firm at least till 3-8-1973. The ITO did not grant continuation of registration. The ITO based his decision on the grounds that there was a change in the constitution of the firm by the death of partner and, therefore, the assessee should have filed Form No. 11A along with a fresh instrument of partnership and that in view of clauses 7 and 8 of the partnership deed on the death of the partner there was no dissolution of the firm and, hence, section 187(2) of the Act still applied. Consequently, he passed an order treating the assessee as an unregistered firm. This order of the ITO was confirmed by the AAC.

3. The assessee carried the matter in further appeal to the Tribunal. The Tribunal took note of the fact that there was no controversy about the firm being genuine and the entries being true. It held that the entries in the day book which were signed by the three continuing partners and the three daughters of the deceased, who were admitted as partners consequent on the death of the deceased, together with the original partnership deed constituted an instrument of partnership. The Tribunal further held that in view of the facts of this case, application u/s 184(4) of the Act, read with sub-section (8) of the said section, in Form No. 11A framed under rule 22 of the rules should have been filed. The assessee had instead filed Form No. 12 framed under the same rule 24 under a bona fide impression that the application was required to be made u/s 184(7). The Tribunal noted that particulars and declaration required in Form No. 11A is substantially the same as required in Form No. 12. In view of its findings that the entries in the book, read with partnership deed, constituted an instrument of partnership and there was no doubt about the genuineness of the firm or the correctness of the entries and observing that the situation had arisen due to the mistake on behalf of the assessee, it directed the assessee to file an application in Form No. 11A along with the instrument of partnership and a petition to condone the delay in filing the same before the ITO within a period of one month. This was to be considered by the ITO in accordance with section 184(4), read with sub-section (8). It rejected the contention of the revenue that there was no instrument of partnership in this case and, hence, the requirements of section 184(1)(i) are not satisfied. The opinion of this Court is sought only on the question mentioned above, i.e., whether the entries in the day book dated 4-8-1973 coupled with the partnership deed dated 16-12-1970 constitute an instrument of partnership for the purpose of section 184. The entry in the day book are signed by the three existing partners as well as the three daughters of the deceased partner and specifies the shares of each daughter. This along with the original partnership deed satisfy all the requirements of law regarding partnership agreement. Section 184(1)(i) requires a partnership should be evidenced by an instrument of partnership and does not prescribe any particular form. The said provision in the Act is to ensure that an application is made for registration under the Act by a genuine partnership firm, the terms of which agreement are evidenced by writing. The registration under the Act, no doubt, allows taxation at a concessional rate and an applicant must satisfy the statutory requirements for getting a registration. As there is no statutory requirement as to the form of the partnership deed, the Tribunal was right in treating the entries coupled with the original deed as an instrument of partnership. It was sought to be contended on behalf of the revenue that the Tribunal ought not to have allowed the assessee to change its application form one in Form No. 12 to Form No. 11 A. This argument does not arise for a decision on the question referred

and the cases on which reliance was placed, viz., K.C. Trunk and Bucket Factory Vs. Commissioner of Income Tax, , Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, and Sri Ramamohan Motor Service Vs. Commissioner of Income Tax, Hyderabad, are not relevant. Even on merits, we find that the decision of the Tribunal is just on the facts and in the circumstances of the case. The question referred is answered in the affirmative, i.e., against the revenue and in favour of the assessed. The assessed shall have1 its costs. Advocate''s fee Rs. 250.

