

(1990) 06 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 326 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Nirmal Kumar and Co.

RESPONDENT

Date of Decision : 22-06-1990

Acts Referred:

Income Tax Act, 1961 — Section 185(3), 256
Partnership Act, 1932 — Section 30

Citation : (1990) 86 CTR 161 : (1991) 188 ITR 631

Hon'ble Judges : S.K Jha, C.J;K.M. Agrawal, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; G.N. Purohit, for the Respondent

Judgement

K.M. Agarwal, J.—By this application u/s 256(2) of the Income Tax Act, 1961 (in short, the "Act"), the Revenue has applied to this court for requiring the Appellate Tribunal to state the case and to refer it for the opinion of this court on the following two proposed questions of law :

"1. Whether the Tribunal has construed the partnership deed reasonably and properly by holding that since the partners had declared that the profits will be divided amongst the four partners in equal ratio, whether they are minors or majors, and the losses were to be borne by the two senior partners, it could be inferred that they have decided not to burden Shri Tarun Kumar with the share of loss in the firm even after he had become a partner on attaining majority ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that there was no change in the constitution of the firm and the assessee was entitled to continuation of registration of the firm for the assessment year 1973-74 ?"

2. The brief facts are that originally the assessment of the assessee for the assessment year 1973-74 was completed by the Income Tax Officer on December 10, 1975, on a total income of Rs. 1,63,520 in the status of a

registered firm. It was later on discovered that one Tarun Kumar, who was earlier a minor and admitted to the benefits of the partnership attained majority on July 21, 1971. Since Tarun Kumar did not sign any declaration in Form No. 12 which was filed by the firm on June 30, 1973, and also in Forms Nos. 11 and 11A filed on April 21, 1974, the Commissioner of Income Tax initiated proceedings u/s 263 of the Act on December 6, 1977, and after issuing notice to the assessee and considering the reply filed by him, set aside the order of the Income Tax Officer by holding that the same was prejudicial to the interests of the Revenue and directed the Income Tax Officer to make a fresh assessment according to law after giving reasonable opportunity to the assessee to produce evidence in support of the contentions in respect of the renewal of registration of the firm. The Income Tax Officer in his turn fixed the case for hearing and asked the assessee to explain as to why the renewal of registration to the firm should not be refused in view of the Commissioner's order passed u/s 263 of the Act. The assessee filed his written reply stating therein that the submissions were already made before the Commissioner of Income Tax, vide its letter dated December 7, 1977, but the Income Tax Officer held that since there was no mention of any reply from the assessee's side in the order of the Commissioner of Income Tax passed u/s 263, he proceeded to consider the matter on merits. According to the Income Tax Officer as per the Commissioner of Income Tax, Shri Tarun Kumar, attained majority on July 21, 1971, and on becoming major, he became liable for losses in the firm also. The Income Tax Officer further observed that the instrument of partnership dated May 16, 1970, did not show how losses would be apportioned amongst the major partners on the attaining of majority by the minor partner. There was thus a change in the shares of the partners with regard to the losses of the firm and the certificate about no change in the shares of the partners given by the firm in Form No. 12 was held to be incorrect by the Income tax Officer. The Income Tax Officer ultimately held that the partnership deed dated May 16, 1970, lost its validity on December 27, 1971, when the minor, Tarun Kumar, attained majority and as such during the year under consideration, there was no genuine partnership firm in existence evidenced by a proper partnership deed. Accordingly, the Income Tax Officer refused renewal of registration to the firm u/s 184(7) of the Act and proceeded to assess it as an association of persons. The appeal preferred by the assessee was dismissed by the Commissioner of Income Tax (Appeals). The assessee preferred a further appeal before the Appellate Tribunal, which was allowed by holding that there was no change in the constitution of the firm due to Tarun Kumar attaining majority during the year of assessment. It was further held that the assessee was entitled to claim continuation of the registration of the firm and the taxing authorities were not justified in refusing to accept the claim of the assessee. The Appellate Tribunal further directed the Income Tax Officer to give an opportunity to the assessee to remove the alleged defect in Form No. 12 filed by it in the light of the provision of Section 185(3) of the Act by holding that the Income Tax Officer was not justified in rejecting the claim of the assessee for continuation of registration merely on the ground that one of the major partners did not sign the

declaration in Form No. 12. Being aggrieved, the Revenue applied for a reference u/s 256(1) of the Act which was rejected, The Revenue has, therefore, preferred this application u/s 256(2) of the Act for requiring the Tribunal to state the case and to make a reference as aforesaid.

3. Having heard learned counsel for the parties we are of the view that no question of law arises out of the order of Tribunal and, therefore, the Tribunal was right in refusing to make a reference. The question was whether the assessee was entitled to claim continuation of registration of the firm even after the date of minor, Tarun Kumar, attaining the age of majority on July 21, 1971, and the effect of Tarun Kumar's failure to sign the declaration in the requisite forms. In the light of the proviso to Sub-section (5) and the provisions of Sub-section (7) of Section 30 of the Indian Partnership Act, 1932, and those of Section 185(3) of the Act, the Tribunal came to the conclusion that the assessee was entitled to the continuation of registration of the firm. This conclusion was not challenged. What was sought to be challenged by the proposed question was, as pointed out by the Tribunal, the finding of facts. The application for reference was, therefore, rightly rejected.

4. For the foregoing reasons, this application u/s 256(2) of the Act fails and it is hereby dismissed. No order as to costs.