(1997) 09 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 81 of 1986

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

PARSHOTAM DEV DHIR and CO. — RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:
Income Tax Act, 1961 — Section 185, 256

Citation : (1998) 145 CTR 137 : (1998) 99 TAXMAN 18

Hon'ble Judges : N. K. Agrawal, J

Bench : Division Bench

Judgement

N. K. AGRAWAL, J. :

The following question has been referred to this Court by the Tribunal under s. 256(1) of the IT Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the finding of the AAC that the assessee-firm was entitled to registration under s. 185(1)(b) of the IT Act, 1961 ?"

2. Shri Parshottam Dev Dhir obtained a licence to sell Indian made foreign liquor from the Punjab Government. He entered into a partnership on 1st April, 1977 with Shri Hari Dev Dhir and Smt. Bimla Vati. Application for registration of the partnership firm for the asst. yr. 1974-75 was rejected by the ITO on the ground that licence had been issued in the name of Parshottam Dev Dhir & Co., Hoshiarpur Road, Jalandhar showing Parshottam Dev Dhir as the sole proprietor of the business. Partnership had been formed by 3 persons including two non-licensee partners.

3. The AAC allowed the assessees appeal and the Tribunal upheld the appellate order, taking the view that registration was wrongly refused to the firm.

4. The question which actually arises for consideration is whether registration can be refused to a partnership firm under s. 185(1) of the IT Act on the ground that

the person or persons holding licence to run a business in liquor had constituted such firm by adding more persons as partners without permission from the competent authority under the Punjab Excise Act and the rules framed thereunder.

5. A similar question was examined by this Court in COMMISSIONER OF Income Tax Vs. JAGDISH CHAND WALIA and CO., and it has been held that a partnership firm constituted by a licensee together with non-licensee partners to run a liquor business cannot be treated to be a genuine firm under s. 185(1) of the IT Act inasmuch as there was a breach of r. 7 of the Punjab Liquor Licence Rules, 1956.

Following the aforesaid view, the question is answered in the negative i.e., in favour of the Department and against the assessee.