

(1971) 07 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Reference No. 4 of 1971

Commissioner of Income Tax

APPELLANT

Vs

Ram Saran Inder Singh

RESPONDENT

Date of Decision : 22-07-1971

Acts Referred:

Income Tax Act, 1961 — Section 184(7), 186(1)

Citation : (1973) 87 ITR 224

Hon'ble Judges : H.R. Sodhi, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; Bhagirath Dass and B.K. Jhingan, for the Respondent

Judgement

1. The following question of law has been referred by the Income Tax Appellate Tribunal, Chandigarh Bench, for our opinion:

" Whether, on the facts and in the circumstances of the case, and particularly in view of the fact that the deed of corrigendum had been executed before the Income Tax Officer passed the impugned orders, the assessee was entitled to registration for the assessment year 1964-65 and continuation thereof for the assessment years 1965-66 and 1966-67 ?"

Messrs. Ram Saran Inder Singh, Khanna, a partnership firm, was registered with the Income Tax department up to the assessment year 1963-64. It had the following partners :

1. Shri Ram Saran.
2. Shri Inder Singh.
3. Shri Bali Ram.
4. Shri Behari Lal.

The shares of the partners in profit and loss were equal. During the account year

relevant to the assessment year 1964-65, there was a change in the constitution of the firm. Shri Bali Ram retired. His place was taken by Hans Raj, son of Mehnga Ram with effect from 13th September, 1963. A fresh deed of partnership was executed on 18th September, 1963. The shares of the partners in profit and loss were equal. However, in the account books for the period commencing from 13th September, 1963, to 31st March, 1964, the profits were distributed unequally amongst the partners, i.e., Hans Raj, three annas; Inder Singh, four annas ; Ram Saran, four annas and Behari Lal, five annas. The Income Tax Officer granted registration to the reconstituted firm under the deed of partnership dated 18th September, 1963, for the assessment year 1964-65. When later it was discovered that the profits had been shared unequally and not in the ratio indicated in the deed of partnership, the Income Tax Officer proceeded to take action u/s 186(1) of the Income Tax Act, 1961, He, accordingly, issued a notice to show cause on 14th September, 1966, to the partners as to why the registration should not be cancelled. This notice was served on the assessee on 15th September, 1966. On receipt of the notice, the assessee executed a corrigendum dated 7th October, 1966, to the original deed of partnership and modified the profit sharing ratio. In other words, the profit sharing ratio was brought in accord with the actual distribution of profits. The deed of corrigendum was duly filed by the assessee with the Income Tax Officer. The Income Tax Officer, thereafter, cancelled the registration for the assessment year 1964-65 u/s 186(1) of the 1961 Act. He observed that the deed of corrigendum was drawn up on 7th October, 1966, after the close of the previous year in question and thus did not help the assessee. The Income Tax Officer further disallowed the assessee's claim for continuation of the registration u/s 184(7) for the two subsequent assessment years 1965-66 and 1966-67.

2. The assessee then preferred an appeal to the Appellate Assistant Commissioner of Income Tax, who held that for the first period, that is, from 1st April, 1963, to 12th September, 1963, the assessee was entitled to registration and that for the period from 13th September, 1963, to 31st March, 1964, the registration had been rightly cancelled. As a consequence, the order of the Income Tax Officer refusing continuation of registration of the firm for the years 1965-66 and 1966-67 was upheld.

3. The assessee then preferred an appeal to the Income Tax Appellate Tribunal. Before the Tribunal it was urged that no doubt the allocation of profits had been done in a ratio other than the ratio specified in the partnership deed, but as the partnership deed had been duly rectified by a deed of corrigendum dated 7th October, 1966, the revenue authorities were not right in ignoring the corrigendum and refusing registration. The Tribunal accepted the assessee's contention with the following observations ;

" We find that there is considerable force in the contention of the assessee. Even though the action of the Income Tax Officer in issuing the notice for cancellation of registration was right, the documents which were filed before he passed the

order could not be ignored. The effect of the corrigendum was that it removed the defects which were there in the original partnership deed and, therefore, the partnership deed as originally executed stood modified by the corrigendum. This, the assessee has the right to do. If there was no deed of rectification or corrigendum before the Income Tax Officer when he passed the order, the assessee would have no case. We, therefore, agree with the assessee that the firm was entitled to registration as the corrigendum deed had been filed before the Income Tax Officer earlier than the date of order u/s 186(1)."

As a consequence, the Tribunal further directed that the registration be continued for the two subsequent years 1965-66 and 1966-67.

4. The Commissioner of Income Tax made an application u/s 256(1) for referring the question of law, already set out above, for the opinion of this court and the Tribunal by its order dated 8th December, 1970 accordingly, has referred the said question.

5. Mr. Awasthy, learned counsel for the department, has contended that the order of the Tribunal cannot be sustained. He has drawn our attention to Sections 184, 185 and 187(2). He has also urged that the registration of the firm in order to be effective has to be during the assessment year in question, though under Sub-section (7) of Section 184 it shall have effect for every subsequent assessment year, provided there is no change in the constitution of the firm or the shares of the partners and it furnishes along with its return of income for the assessment year concerned a declaration to that effect in the prescribed form and verified in the prescribed manner. Section 187 is in the following terms :

"187. (1) Where at the time of making an assessment u/s 143 or Section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment:

Provided that-

(i) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same; and

(ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

(2) For the purposes of this section, there is a change in the constitution of the firm-

(a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them. "

This section postulates what is to happen when the constitution of a firm is changed. In the present case, the constitution of the old partnership was changed and the new constitution was evidenced by the new partnership deed. The distribution of profits was not in accordance with the new partnership deed. This led to the cancellation of the partnership deed. The corrigendum which brought the shares in accord with the distribution of profits was furnished on 7th October, 1966. There was no valid partnership deed in existence, vis-a-vis the newly constituted firm till that date. Therefore, the partnership deed executed on 18th September, 1963, became operative in the year 1966 and in the assessment year in which the corrigendum was executed the partnership became entitled to registration, and that registration could not have retrospective effect. The view we have taken of the matter finds support from the decision of the Supreme Court in *N.T. Patel and Company Vs. Commissioner of Income Tax, Madras*, .

6. In our opinion, the argument of Mr. Awasthy is unexceptionable and has to be accepted.

7. Mr. Bhagirath Pass, learned counsel for the assessee, on the other hand, seeing the force of the opposite counsel's contention, urged that the Tribunal was wrong and so also the respective authorities when they held that the unequal distribution of profits would cause the cancellation of the registration of the partnership deed dated 18th September, 1963.

8. This is a question which has not been referred to us. In fact, this matter was never agitated before the Tribunal. Therefore, we are not called upon to go into this matter.

9. For the reasons recorded above, we answer the question referred to us in the negative, that is in favour of the department and against the assessee. The department will have its costs, which are assessed at Rs. 200.