(1978) 03 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 451 of 1971

Commissioner of Income Tax — APPELLANT

Vs

R.S. Nikhera Construction Co. — RESPONDENT

Date of Decision : 18-03-1978

Acts Referred:
Income Tax Act, 1922 — Section 26A

Citation : (1980) ILR (MP) 777 : (1978) 114 ITR 294 : (1978) JLJ 431 : (1978) 23 MPLJ 630 : (1978) MPLJ 630

Hon'ble Judges : A.P. Sen, C.J;J.S. Verma, J

Bench : Division Bench

Advocate : P.S. Khirwadkar, for the Appellant; None, for the Respondent

Judgement

A.P. Sen, C.J.

This is a reference u/s 66(1) of the Indian Income Tax Act, 1922, made by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, referring the following question of law, said to arise out of its order in Income Tax Appeal No. 14979 of 1966-67, dated May 30, 1970, to this court for its opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing the Income Tax Officer to grant registration to the assessee-firm u/s 26A of the Indian Income Tax Act, 1922 ?"

The facts, giving rise to this reference, in brief, are as follows. The assessee-firm, known as Messrs. R. S. Nikhera Construction Co., Durg, consisting of 8 partners was constituted under an instrument of partnership, dated December 7, 1956. Under Clause 2 of the partnership deed, the partners of the firm formed themselves into three groups to share the profits as follows:

Group I Partners

Shares

Dau Ramasra

Dau Murli

0-5-4

Dau Deenbandhu

Group II Partners

Dau Ramdayal

Dau Mahasingh

0-5-4

Dau Ramsingh

Group III Partners

Shri Rajaram

Shri Kishandas

0-5-4

The application for registration of the firm u/s 26A of the Indian Income Tax Act, 1922, for the assessment year 1958-59, relevant to the accounting period ended Diwali of 1957, was filed by the partners on October 21, 1957. The application was signed by all the 8 partners. The Income Tax Officer, Burg, by his order dated March 20, 1961, refused to grant registration to the firm on the ground that the shares of each partner of the various groups, referred to above, had not been specifically mentioned in the partnership deed. The Appellate Assistant Commissioner, Raipur, by his order dated October 5, 1966, upheld the order of the Income Tax Officer. On further appeal, the Appellate Tribunal, however, took a different view. It held, on the authority of Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, , that the requirements of Section 26A of the Indian Income Tax Act, 1922, were satisfied, inasmuch as the partnership deed could be reasonably construed as clearly implying that the shares of the partners of each group were equal. It further observed that, in the present case, all the 8 partners had admittedly signed the application for registration, and that the department had already ascertained the individual shares of the 8 partners and assessed them accordingly construing the partnership deed in the same manner.

Feeling aggrieved, the Commissioner of Income Tax applied u/s 66(1) of the Indian Income Tax Act, 1922, to have the above question referred. The Appellate Tribunal, by its order dated August 31, 1971, drew up the statement of the case and has referred the said question.

Section 26A of the Indian Income Tax Act, 1922, merely requires "the individual shares of the partners" to be specified in the instrument of partnership. However, the specification of the shares need not be express, it may be implied. The requirement of the section is satisfied, if the deed can be reasonably construed as clearly implying that the shares of the partners are equal. In construing the partnership deed, as we do, it is susceptible of no other construction. Clause 2 of the deed, no doubt, does not expressly mention the individual shares of the 8 partners, but mentions that they belong to three groups and each was to have l/3rd share in the profits. By Clause 3, it is stipulated that the partners of each group would, in that proportion, bear the loss also. The department does not deny that the partners of each group were collectively entitled to l/3rd share in the profits of the firm. It is true that the share of each partner of the respective group is not specifically mentioned, but, by implication, the partners are entitled to equally share the profits falling to the share of their particular group. This inference of ours is supported by the fact that the department itself has assessed each of the 8 partners as-follows:-

Group I

Partners

Shares

Dau Ramasra

1/3

Dau Murli

1/3

0-5-4

Dau Deenbandhu

1/3

Group II

Partners

Dau Ramdayal

1/3

Dau Mahasingh

1/3

0-5-4

Dau Ramsingh

1/3

Group III

Partners

Rajaram

1/2

0-5-4

Shri Kishandas

1/2

As already stated, Section 26A of the Indian Income Tax Act, 1922, merely requires the "individual shares of the partners" to be specified in the instrument. No firm can be registered, unless the instrument of partner-ship specifies the individual shares of the partners in the profits of the partnership. However, the specification of the shares need not be express; it may be implied.

In Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, , the Supreme Court laid down that the requirements of the section are satisfied, if the shares of the partners could be ascertained, by necessary implication, by reading the deed as a whole. In Kylasa Sarabhiah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh, , their Lordships, while dealing with the question, observed :

"The word ''specify'' is used in Section 26A and . Rule 2 as meaning mentioning, describing or defining in detail; it does not mean expressly setting out in fractional or other shares."

The view taken in that case was followed by their Lordships in Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, , where, they, reading the partnership deed as a whole and in the context of the relevant circumstances of the case, held that there was specification of the individual shares of the partners in the profits within the meaning of Section 26A of the Act and thus the firm was entitled to registration. That, in our opinion, is precisely the case here.

The three decisions of the Supreme Court in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , N.T. Patel and Company Vs. Commissioner of Income Tax, Madras, and Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, are of no avail to the revenue.

In Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , their Lordships held that if the partners of two or more firms enter into a bigger partnership, each of them should personally sign the application for registration of the bigger firm. Here, all the 8 partners have admittedly signed the application for registration.

In N.T. Patel and Company Vs. Commissioner of Income Tax, Madras, their Lordships, while indicating that the question of registration was of vital importance in assessing a firm, observed that if the firm desires to have this benefit, it must conform strictly to the requirements prescribed by the law. There, the partnership in existence in the relevant accounting year was defective, though the defect was sought to be rectified by another deed executed after the close of the year, and, therefore, their Lordships held that registration could not be granted. Here, the instrument of partnership was very much in existence in the accounting year.

In Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, their Lordships were dealing with a partnership, where the shares of the partners were unequal and a minor was admitted to the benefits of the partnership. It was necessary to specify in the deed how the amount of loss in the minor''s share would be borne by the partners and, therefore, they said that there could be no presumption that the losses were to be shared equally.

We, accordingly, answer the reference against the revenue and in favour of the assessee. It must accordingly be held that the Tribunal was justified in directing the Income Tax Officer to grant registration to the assessee-firm u/s 26A of the Indian Income Tax Act, 1922, for the assessment year 1958-59. Since the assessee did not enter appearance, there shall be no order as to costs.