

(1978) 11 CAL CK 0022

In the Calcutta High Court

Case No : Income-tax Reference No. 87 of 1972

Commissioner of Income Tax

APPELLANT

Vs

R.S. Singh and Co.

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Income Tax Act, 1961 — Section 184(7)

Citation : (1979) 118 ITR 30

Hon'ble Judges : Sudhindra Mohan Guha, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : B.L. Pal and N.L. Pal, for the Appellant;P.K. Pal and Sidhartha Chatterjee, for the Respondent

Judgement

Dipak Kumak Sen, J.—The short facts in this reference are, inter alia, that Messrs. R. S. Singh & Co., the assessee, is a partnership constituted under a deed dated the 18th May, 1953. The material parts of the said deed are, inter alia, as follows :

"Partnership deed

This Indenture of partnership made this 18th day of May one thousand nine hundred and fifty-three

Between

1. Ram Swarth Singh, son of late Dargga Singh, by caste Hindu by profession trader and a contractor at present residing at Kanchrapara within the district of 24 Pgs.

Of the first part.

And

2. Rambalak Singh Sachidanand Singh, a Hindu undivided family, consisting of Ram Balak Singh and Sachidanand Singh where the karta is Rambalak Singh by

caste Hindu by profession a trader and a contractor at present residing at Kanchrapara within the district of 24 Pgs.

Of the second part.

And

3. Chandradip Singh, son of Sri Sital Singh, by caste Hindu by profession a trader and a contractor at present residing at Kanchrapara within the dist. of 24 Pgs.

Of the third part.

(All the above persons hereinto, referred to as "Party" which expression, unless repugnant to or inconsistent with the context, shall mean and include their heirs, executors, administrators, legal representatives and assigns)...

3. That the partnership shall be at will but shall not be dissolved by death, insolvency or retirement of any partner but shall be carried on by rest of the partners except in case of death of any partner when male heir or legal representative of deceased partner shall be forthwith admitted as a co-partner with all the rights and liabilities of the deceased partner.....

9. That the profits and losses in the said business will be divided among the partners respectively as below :

1.

Ram Swarth Singh

0-6-0

2.

Rambalak Singh Sachidanand Singh

0-6-0

3.

Chandradip Singh

0-4-0

1-0-0

In witness whereof the parties hereto do hereunto set and subscribe their respective hands and seals on the date first above-written.

Name & Address of Witness :--

Signatures of Partners.

Sd. Ram Swarth Singh.

Sd. Rambalak Singh.

Sd. Chandradip Singh."

2. The assessee had been granted registration in the past assessment years. For the assessment year 1962-63, the relevant previous year being that ended on the 31st March, 1962, the assessee filed a declaration u/s 184(7) of the I.T. Act, 1961, along with its return of income. The ITO refused registration to the assessee on the ground that the assessee, a partnership, had been purportedly constituted with two individuals and an HUF which was not permissible in law. The ITO came to the aforesaid conclusion relying on the description of the parties in the preamble of the deed as set out hereinbefore.

3. Being aggrieved, the assessee preferred an appeal. The AAC upheld the order of the ITO relying on the preamble and the clause dealing with the division of profits and loss which also treated the HUF as a partner and specified its share. He also found that, in the capital account of the assessee, net profits had been credited to the HUF.

4. The assessee preferred a further appeal to the Tribunal. It was, inter alia, contended before the Tribunal on behalf of the assessee, that it was the karta, Rambalak Singh, who has entered into the partnership and not the HUF and that the description of the parties in the preamble, if properly read, indicated that it was the individual who was a party to the deed, inasmuch as heirs, executors, administrators, legal representatives and assigns had been included in the description. Clause 3 of the deed, which provided for the death or retirement of a partner, also indicated that the partners were all deemed to be individuals.

5. The Tribunal held that, on a proper reading of the deed, it had to be construed that Rambalak Singh, the karta, is a the partner of the firm in in his individual capacity. Whatever be the description in the preamble, it was the karta who had signed the deed. The Tribunal based its aforesaid finding also on the extended meaning given to the expression "party" in the deed and the provisions of Clause 3 thereof. The appeal of the assessee was accordingly upheld and it was directed that the assessee should be registered.

6. On an application of the CIT, the Tribunal has drawn up a statement of the case and has referred for the opinion of this court, the following question of law arising out of its order:

"Whether, on the facts and in the circumstances of the case, and on a proper interpretation of the partnership deed dated 18th May, 1953, the Tribunal was right in holding that the partnership deed was executed between the three individuals and not between two individuals and one HUF and in that view holding that the assessee-firm was entitled to benefit of registration u/s 184(7) of Income Tax Act, 1961 ?"

7. Mr. B. L. Pal, learned counsel for the revenue, submitted that the preamble and Clause 9 of the deed which provided for division of profit and loss, clearly indicated that the intention of the parties was to admit the HUF as a partner and

not the karta thereof as an individual. He also submitted that it was not for the court to rewrite the contract for the parties and if, on the face of it, the deed contravened the provisions of any law, it should be held to be invalid.

8. In support of his contentions, Mr. Pal cited a decision of the Supreme Court in *Commissioner of Income Tax, Bombay Vs. Dwarkadas Khetan and Co.*, . The facts in that case were that under a deed, a minor had been admitted as a full partner in a partnership. The minor had signed the deed, which provided that as a full partner the minor was not only entitled to a share of the profits but was also liable to bear all the losses including loss of capital. It was also provided that the minor, as a full partner, was entitled to manage the affairs of the firm. On such facts, the Supreme Court held that the deed went beyond Section 30 of the Indian Partnership Act and could not be regarded as valid for the purposes of registration.

9. Mr. Pal next cited another decision of the Supreme Court in *Ram Laxman Sugar Mills Vs. Commissioner of Income Tax, Uttar Pradesh and Another*, . The facts here were that in a deed of partnership one of the parties representing his joint Hindu family had signed for and on behalf of the family as manager and karta. There was a subsequent partition of the family. The question arose whether after the partition of the family the partnership could be granted renewal of registration. The Supreme Court observed as follows (p. 617):

"In ascertaining the legal effect of a transaction the court seeks in the first instance to determine the intention of the parties, and when ambiguous expressions are used the court may normally adopt that interpretation which upholds the deed, if the parties thereto have acted on the assumption of its validity. From the mere fact that the manager of a Hindu undivided family describing himself as representing the family entered into an agreement of partnership with other persons, it cannot be inferred that an agreement of partnership was intended contrary to law between a Hindu undivided family consisting of all adult members, females, minors and even unborn persons and strangers to the family."

10. The Supreme Court held that on a correct interpretation of the document the party had joined the partnership as an individual. The mere description that he was the manager of a joint Hindu family would not make the family a partner of the firm.

11. Mr. Pranab Pal, learned counsel for the assessee, contended on the other hand that it was the signature which was the most important part of the deed. In the instant case, the signatures clearly showed that all the persons had signed as individuals and no one had signed for the HUF. He submitted that the deed had to be construed reasonably and it was to be assumed that the parties intended to make a valid deed and not one which was invalid or illegal. In support of his contentions, Mr. Pal cited a decision of this court in *Narayan Prasad Vijaivargiya Vs. Commissioner of Income Tax*, for the following observations at p. 756 of the

report as follows :

"In our view a deed is to be read and construed as a whole and, if possible, effect should be given to all parts thereof. In other words, the general intention is to be collected from the instrument as a whole and that intention should be inferred from the general form of the deed. See Odger's Construction of Deeds and Statutes, Fifth edition, page 33. This would be more so when a deed is to be construed reasonably. The way in which the learned counsel for the revenue wants us to read the deed would amount to deletion or not giving effect to a part of the deed which represents the intention of the parties to the deed. Unless a part of a deed is so inconsistent with the rest of it that no effect can be given to it, that part should be read and given effect to while construing a deed. Further, while construing a deed, one should bear in mind the principle of construction as stated in Odger's Construction of Deeds and Statutes, Fifth edition, at page 32. It is stated thus:

"The law is anxious to save a deed if possible. This is sometimes expressed in the maxim *ut res magis valeat quam pereat*. If by any reasonable construction the intention of the parties can be arrived at and that intention carried out consistently with the rules of law, the court will take that course".

12. In our view, the law is well settled. The principles laid down by the Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. Dwarkadas Khetan and Co., has no application to the facts in the present reference. The admitted position before the Supreme Court was that a minor was sought to be made a partner in contravention of Section 30 of the Indian Partnership Act. There is no admission in this case that it was the intention of the parties to make the HUF a partner in the firm.

13. The decision of the Supreme Court in Ram Laxman Sugar Mills Vs. Commissioner of Income Tax, Uttar Pradesh and Another, , though cited by the revenues supports the case of the assessee fully. It is to be appreciated that learned counsel for the revenue, in his fairness, cited this decision before us.

14. In view of the principles as noted above, it cannot be said that the Tribunal in the instant case erred in holding that the deed was executed between three individuals. Reading the document as a whole, it cannot be said that it was the intention of the parties to make the HUF a partner. A settled principle of construction of documents is where the operative part of a document is unambiguous the recitals would have no effect (see Odger's Construction of Deeds" and Statutes, 5th Edn., page 150). In the instant case, the signatures are those of individuals signing for themselves and described as partners.

15. Learned counsel for the assessee also drew our attention to the provisions of Section 184(7) of the I.T. Act, 1961. It was submitted by him that the said section did not confer any jurisdiction on the ITO to refuse renewal of registration. He pointed out that all the conditions laid down in the said section having been duly satisfied by the assessee, the ITO had no other alternative but

to grant registration. As we have decided the questions on merits, it is not necessary for us to deal further with this aspect of the matter. To answer the question as framed it is also not necessary for us to go into that aspect.

16. We answer the question referred in the affirmative and in favour of the assessee. There will be no order as to costs.

Sudhindra Mohan Guha, J.

17. I agree.