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**(1976) 10 P&H CK 0027**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Income-tax Reference No. 27 of 1973

Commissioner of Income Tax

APPELLANT

Vs

Standard Plastic Industries

RESPONDENT

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**Date of Decision :** 18-10-1976

**Acts Referred:**

Income Tax Act, 1961 — Section 184, 184(1), 184(5), 184(7)

**Citation :** (1977) 107 ITR 431

**Hon'ble Judges :** O. Chinnappa Reddy, Acting C.J.; M.R. Sharma, J

**Bench :** Division Bench

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

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**Judgement**

Chinnappa Reddy, Actg. C.J.—The assessee is a firm which was originally constituted under a deed of partnership dated September 17, 1962. Under the terms of the deed, the partnership was for a period of three years. The three years expired on August 31, 1965. The partnership, however, continued though no fresh deed was written. The partners and the shares of the partners continued as before. For the accounting year 1962-63, registration was granted to the firm on the basis of the deed of partnership dated September 17, 1962. Registration was continued for the accounting years 1963-64, 1964-65, 1965-66 and 1966-67. Declaration for continuation of registration for the accounting years 1967-68 and 1968-69 were also filed and continuation of registration was granted by the Income Tax Officer. The continuation of registration for the accounting years 1967-68 and 1968-69 was, however, cancelled by the Additional Commissioner of Income Tax on the ground that there was no deed of partnership in existence during the relevant accounting years. On appeal by the assessee, the Tribunal set aside the order of the Additional Commissioner of Income Tax on the ground that a deed of partnership was essential for initial registration but not for continuation of registration. At the instance of the revenue, the following question has been referred to us for our decision:

"Whether, on the facts and in the circumstances of the case, the assessee-firm was entitled to continuation of registration for the assessment years 1968-69 and 1969-70 when a written partnership deed did not exist ?"

2. Section 184 of the Income Tax Act, 1961, to the extent that is necessary, may be usefully extracted here. It is as follows :

"184. Application for registration.--(1) An application for registration of a firm for the purposes of this Act may be made to the Income Tax Officer on behalf of any firm, if-

(i) the partnership is evidenced by an instrument; and

(ii) the individual shares of the partners are specified in that instrument.....

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof.....

(6) The application shall be made in the prescribed form and shall contain the prescribed particulars.

(7) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year ; Provided that-

(i) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; and

(ii) the firm furnishes, before the expiry of the time allowed under Sub-section (1) or Sub-section (2) of Section 139 (whether fixed originally or on extension) for furnishing the return of income for such subsequent assessment year, a declaration to that effect, in the prescribed form and verified in the prescribed manner, so, however, that where the Income Tax Officer is satisfied that the firm was prevented by sufficient cause from furnishing the declaration within the time so allowed, he may allow the firm to furnish the declaration at any time before the assessment is made.

(8) Where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this Section."

3. It will be useful to extract Section 26A of the Indian Income Tax Act, 1922, which was the provision corresponding to Section 184 of the 1961 Act. It was as follows:

"26A. Procedure in registration of firms.--(1) Application may be made to the Income Tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to Income Tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed ; and it shall be dealt with by the Income Tax Officer in such manner as may be prescribed."

4. A striking difference between the procedure under the 1922 Act and 1961 Act is at once noticeable. Whereas under the 1922 Act, an application for registration had to be made to the Income Tax Officer every year, under the 1961 Act, an application has to be submitted at the time of the initial registration only, but not for subsequent years. During subsequent years, all that is necessary is the furnishing of a declaration in the prescribed form, upon the furnishing of which, registration originally granted will continue for every subsequent assessment year. Section 26A of the 1922 Act required the existence of an instrument of partnership specifying the individual shares of the partnership for the purposes of registration under that Act. Similarly, Section 184 (1) and (5) prescribe the existence of an instrument of partnership for the purposes of the original registration of a firm. But, for continuation of registration u/s 184(7), the existence of a deed of partnership is no longer necessary. All that is necessary is that the firm continues as before whether there is a deed of partnership currently in force or not. The language of Sub-section (7) is mandatory that registration once granted shall have effect for every subsequent year provided the relevant declaration is made. It does not stipulate the current subsistence of a deed of partnership.

5. Shri D.N. Awasthy, learned counsel for the revenue, relied upon COMMISSIONER OF INCOME TAX, MADRAS Vs. GELLI KRISHNAMURTHY AND OTHERS., and National Motor Company Vs. Commissioner of Income Tax, Madhya Pradesh, . Both the cases were under the 1922 Act and are, therefore, not applicable.

6. In S.P. Pandey and Brothers Vs. Commissioner of Income Tax, , Untwalia C.J. observed :

"The scheme under the 1961 Act, therefore, is that once registration is granted to any firm for any assessment year under the 1961 Act, the registration shall have effect for every subsequent assessment year on compliance with the requirement of the proviso to Sub-section (7). The Income Tax Officer is merely required to record the fact of the continuance of the registration every year on the instrument of partnership in accordance with Sub-section (4) of Section 185. The declaration to be given in accordance with Sub-section (7) of Section 184 is to be in Form No. 12 prescribed under Rule 24. In this form, after stating that the firm was granted registration for the earlier year, the only declaration which has to be made is that:

"there has been no change in the constitution of the firm or the shares of the partners since the last day of the previous year relevant to the assessment year 19.....19... up to the last date of the previous year relevant to the assessment

year 19.....19... or to the date (.....19...) of dissolution of the firm".

7. While these observations appear to support the view expressed by us, later in the judgment, Untwalia C.J. made the observation (page 521): "Without a fresh partnership deed, the old partnership could not be continued for the purposes of the Income Tax Act", which appears to be against the view expressed by us. For the reasons mentioned by us, we think that the existence of a deed of partnership currently in force is not necessary for the continuation of registration of a firm already registered in accordance with the provisions of Section 184 of the Income Tax Act. The question referred to us is answered in favour of the assessee. No costs.