(1983) 05 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 11 of 1977

Commissioner of Income Tax APPELLANT

Vs

Suraj Bhan and Co. RESPONDENT

Date of Decision : 02-05-1983

Acts Referred:
Income Tax Act, 1961 — Section 185(1)

Citation : (1983) 144 ITR 943 : (1983) 15 TAXMAN 103

Hon'ble Judges : S.P. Goyal, J;Prem Chand Jain, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; D.V. Sehgal and B.R. Mahajan, for the Respondent

Judgement

Prem Chand Jain, J.—The Commissioner of Income Tax has filed this petition u/s 256(2) of the I.T. Act, 1961, praying that the following question of law which arises out of the order of the Tribunal, be referred for our decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the business activity was lawful and as such the assessee-firm was entitled to the benefits of registration ?"

2. In order to appreciate the controversy, certain salient feature of the case may be noticed :

A firm known as M/s. Suraj Bhan & Company was constituted with effect from 1st April, 1970, and a partnership instrument was drawn on 2nd April, 1970. The said firm consisted of five partners and their profit/loss sharing ratio has been mentioned in Clause 8 of the partnership deed. The firm''s application for registration was refused by the ITO by order dated 26th March, 1974, and an assessment was framed in the status of an association of persons. On appeal the AAC confirmed the ITO''s order refusing registration. The assessee took up the matter to the Tribunal. On a consideration of the entire matter the Tribunal found as follows :

"This clearly implies that the five individuals who are stated to have constituted the partnership were admitted by the Department to have joined hands together for carrying on a business for earning profit. The only ingredient that is further required in the case of a partnership is that the element of agency should also be there. In the present case, the partnership instrument itself furnishes evidence as to the said element of mutual agency and there is no material on the record to show that the element of mutual agency was not there. We, therefore, conclude that registration should not have been refused in the instant case u/s 185(1)(b), Income Tax Act. The Appellate Assistant Commissioner''s order is set aside. The registration is granted."

3. In view of the aforesaid finding, the registration was granted.

4. Feeling that a question of law arose out of the order of the Tribunal, the Revenue filed an application u/s 256(1) of the I.T. Act but the same was declined by the Tribunal vide its order dated August 31, 1976. Hence the present petition u/s 256(2) of the said Act.

5. We have heard the learned counsel for the parties and find no merit in this petition. The Tribunal, has found as a fact that the partnership had been constituted lawfully through the partnership deed. Merely the fact that the partners indulged in speculation business in gur and shakkar which activity is unlawful, would not make the firm non-genuine. The Tribunal was justified in declining the prayer of the Revenue to refer the question to this court for its decision as no case for such a reference was made out by the Revenue.

6. Consequently, the petition is dismissed but without any order as to costs.

