
(1997) 05 AHC CK 0079

In the Allahabad High Court

Case No : Income-tax Reference No. 83 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Vijai Kumar Rajesh Kumar

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Income Tax Act, 1961 — Section 185

Citation : (1998) 144 CTR 582 : (1998) 231 ITR 625

Hon'ble Judges : P.K. Jain, J;Om Prakash, J

Bench : Division Bench

Judgement

Om Prakash, J.—The Income Tax Appellate Tribunal (Allahabad Bench, Allahabad), referred the following question relating to the assessment year 1974-75 for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (briefly, "the Act") :

"Whether, on the facts and in the circumstances of the case, the assessee was rightly allowed registration u/s 185 of the Income Tax Act, 1961 ?"

2. The Assessing Officer in his order passed u/s 185(1)(b) of the Act held that the partnership deed is defective and the firm is not entitled to registration.

3. The constitution of the assessee-firm is as under :

1.

Sri Sechan Ram S/o Late Hari Das AM major partners

20%

2.

Sri Ghasi Ram S/o Sri Ganga Ram "

07%

3.

Sri Puhawashi Prasad S/o Ghasi Ram

13%

4. Besides the major partners following minors were also admitted to the benefits of the partnership :

1.

Ram Kumar S/o Khyal Chand

All minor partners

20%

2.

Pradeep Kumar S/o Ram Shog

“

20%

3.

Deepak Kumar S/o Kashi Nath

“

20%

5. Clause 5 of the partnership deed is as under :

"That at the close of each year the account of the firm will be prepared after adjusting all the business expenses and in the case of profit the amount of profit shall be credited to the respective accounts of the partners according to their shares as specified in para 3 and in the case of loss the amount of loss shall be borne by the partners according to their shares."

6. Interpreting Clause 5 of the partnership deed, the Assessing Officer observed as under :

"From the above it is clear that the ratio in which the loss falling to the shares of the minors are to be shared by the major partners has not been clearly specified in the deed."

7. On appeal, the appellate authority held as follows :

"In the instant case, it is found that shares in the profits of the firm have specifically been given and the shares in the losses of the firm have also been given. Shares in the losses are in the same proportion on which the profits are being shared with a stipulation that in the case of the minors he will be responsible only to the extent of his share and would not be personally liable. This stipulation is of immense significance as it is in accordance with Section

30(3) of the Indian Partnership Act, 1932."

8. This is how the appellate authority accepted the contention of counsel for the assessee-firm and directed the Assessing Officer to treat the firm as a registered one.

9. The dispute was further carried in appeal before the Appellate Tribunal which affirming the order of the first appellate authority found as follows :

"In our view there is no scope for interference in the order of the assessee. The case of the Supreme Court reported in *Mandiyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad*, is clearly distinguishable as in that case there was no reference to sharing of losses of the firm by the partners in the partnership deed while in the case before us so far as the minor's liability for losses is concerned, a specific clause has been inserted indicating therein that he shall be minor liable to the loss to the extent of his share (sic) according to Section 30 of the Indian Partnership Act. . . . The only interpretation that was possible is that the minor will be liable for losses as per the provisions of Section 30(3) of the Indian Partnership Act and he will not be personally liable for the same. Whatever surplus remains after sharing of loss by the minor to the extent of his capital investment, the rest is to be taken as loss to the firm and it is to be shared by the remaining major partners in their profit-sharing ratio. Hence, we uphold the findings given by the appellate authority wherein he has allowed registration to the firm."

10. It is in this backdrop, the Appellate Tribunal referred the aforementioned question for the opinion of this court.

11. The question for consideration is whether the ratio in which the major partners are to bear the losses falling to the share of the minors, is well ascertainable. From the constitution of the firm as reproduced above, it is clear that the share ratio of profits and losses of the major partners is well specified. The share ratio in profits of minors is also clearly stated. Up to 40 per cent. the major partners are to share the profits and losses in the ratio of 20 per cent. 7 per cent. and 13 per cent., respectively. So the share ratio in losses up to 40 per cent. is well defined amongst the major partners. The question is in which ratio they will share 60 per cent. losses falling to the share of the minors. In the absence of any agreement to the contrary it will be inferred that the partners will share losses falling to the share of minors in the same ratio in which they agreed to share losses up to 40 per cent. Accordingly, the share ratio of the three partners, namely, Bechan Ram, Ghasi Ram and Puhwashi Prasad in losses will be 50 per cent. 17.5 per cent. and 32.5 per cent., respectively.

12. Almost a similar question arose in *M/s. Progressive Financers Vs. Commissioner of Income Tax, Madras*, , and then the court held as under (page 603) :

"As minor Sunitha was admitted to the benefits of partnership it is obvious that

she had not to share any loss. The losses were to be distributed among the major partners only. Since they were to share the profits in the proportion in which they had contributed the capital it was implied that they were to share the losses in the same ratio."

13. This being so, the registration could not have been refused on the ground that there was no clear stipulation in the partnership deed as to how the losses falling to the share of the minors would be borne by the major partners.

14. In the result, the aforementioned question is decided in the affirmative, that is, in favour of the assessee and against the Revenue.