

(1976) 04 CAL CK 0010
In the Calcutta High Court

Case No : Income-tax Reference No. 264 of 1968

Commissioner of Income Tax (Central)

APPELLANT

Vs

Ram Kumar Agarwalla and Brothers

RESPONDENT

Date of Decision : 09-04-1976

Acts Referred:

Income Tax Act, 1922 — Section 26A
Income Tax Act, 1961 — Section 184

Citation : (1977) 109 ITR 564

Hon'ble Judges : S.C. Deb, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : Suhas Sen and Ajay Mitra, for the Appellant; S.C. Mitra, for the Respondent

Judgement

Dipak Kumar Sen, J.—This reference u/s 256(1) of the income tax Act, 1961, is at the instance of the Commissioner of income tax (Central), Calcutta. The assessment year involved is 1960-61, the relevant previous year being the calendar year 1959. The facts found or admitted are as follows :

The assessee, Messrs. Ram Kumar Agarwalla & Brothers, Calcutta, is a firm which originally consisted of six partners, viz., (1) Ram Kumar Agarwalla, (2) Monoharlal Agarwalla, (3) Ram Gopal Agarwalla, (4) Ram-anand Agarwalla, (5) Badriprasad Agarwalla, (6) Phulwati Devi, wife of Onkar Agarwalla (deed.). The partners had equal shares in the partnership and were governed by the partnership deed dated the 5th March, 1956.

2. The firm had been registered under the Income Tax Act up to and including the assessment year 1959-60.

3. For the assessment year 1960-61, an application was made on the 28th June, 1960, by the firm for renewal of registration u/s 26A of the Indian Income Tax Act, 1922. This application was duly signed by the said six partners.

4. On the 29th August, 1960, a new partnership deed was executed which, inter

alia, provided as follows :

"The Seventh Party and the Sixth Party being the said widow, Smt. Phool Vati Devi and the son, Shri Sajjan Kumar Agarwalla, mutually decided and agreed to partition away their total right, title and interest to the extent of the share in the said partnership firm and business of Messrs. Ram Kumar Agarwalla & Brothers as was being held by their respective husband and father, Omkumar Agarwalla, until his death in equal half share, and to offer delivery of possession of the said equal half share mutually to each other.

On such offer and delivery of possession mutually to each other of the said respective rights and interests in the said hitherto fore family asset, the said widow, Smt. Phool Vati Devi, decided not to go into the risks of losses and liabilities and/or ups and downs of the said partnership business and further to relinquish her further right, interest and title in the goodwill and/or undertaking and/or assets of the said partnership firm and business entirely and absolutely in favour of the Seventh Party hereto, her only son, then a major, Shri Sajjan Kumar Agarwalla, and the said Shri Sajjan Kumar Agarwalla accepted the said relinquishment of his mother's rights and interests;

the Seventh Party voluntarily elected and notified the said other surviving partners about his intention and decision to become a full-fledged partner and to carry on the said partnership business in identical lines with the identical firm name and identical principal place of business together with the first-mentioned five partners hereto;

the said first to the fifth named partners hereto were satisfied about and accepted the fact of the said mutual partition and delivery of possession to each other as well as the fact of the relinquishment of the rights, title and interest by the said widow, Smt. Phool Vati Devi, in the-said partnership undertaking, business and firm, Ram Kumar Agarwalla & Brothers, absolutely and unconditionally in favour of the Seventh Party hereto and further agreed to admit the Seventh Party hereto in full fledged partnership with them ;

as a result of the said agreement the said seven parties hereto have since the 1st day of January, 1959, been carrying on the said hitherto fore existing business in partnership between themselves as partners ;

the seven parties hereto now deem it expedient and desirable to confirm and ratify the terms and conditions of their partnership into an agreement of partnership;

This Agreement of Partnership has already been distinctly understood between the parties and has been acted upon by the parties with effect from the 1st day of January, 1959."

2. The Income Tax Officer held that by this new deed dated the 29th August, 1960, Sajjan Kumar Agarwalla was introduced as a partner in the place and stead of Smt. Phulwati Devi with effect from 1st January, 1959, and as such the

assessee's application for renewal of registration could not be treated as a valid declaration u/s 184(7) of the subsequent Act, i.e., Income Tax Act, 1961, and, therefore, was not maintainable. As there was no application u/s 184(1) for registration of the new partnership the application for renewal was invalid and the firm was liable to be assessed as an unregistered firm.

3. Being aggrieved by this decision the assessee went up in appeal therefrom. The Appellate Assistant Commissioner held that the Income Tax Act, 1961, had not come into force by the 29th June, 1960, and that the original partnership had continued up to that date. The new partnership was not in existence during the previous year. As such the application dated the 29th June, 1960, was a valid application for renewal. But by reason of the allocation of profits in the account books of the firm in the name of Sajjan Kumar contrary to the earlier deed of partnership dated the 5th March, 1956, the application for registration was misconceived.

4. The assessee went in further appeal before the Tribunal. The Tribunal found and/or held, inter alia, as follows:

(a) Application for renewal of registration for the assessment year 1960-61 had to be made before the 30th June, 1960, as required under rule 2 of the Income Tax Rules, 1922, and consequently the assessee's application for renewal filed on the 29th June, 1960, complied with the statutory requirements.

(b) Under Rule 6, the partnership deed to be considered was the one operative for the calendar year 1959 and the deed dated the 29th August, 1960, which came into existence after the close of the previous year was not relevant at all.

(c) Under the earlier deed the 5th March, 1956, Phulwati Devi was a partner with one-sixth share and in accordance with her instructions contained in the letter dated the 10th July, 1959, Phulwati's share of the profits and income of the firm had been credited to the account of Sajjan Kumar. The Tribunal concluded that:

"We are therefore of opinion that provision in the deed dated 29th August, 1960, that Sajjan Kumar was deemed to be a partner from 1st January, 1959, was of no consequence for the calendar year 1959 and did not affect the rights of the partners under the deed dated 5th March, 1956, which was operative through the previous year 1959....."

5. From the order of the Tribunal the following questions have been referred to us :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee's application for renewal of registration dated the 29th June, 1960, was a valid application either u/s 26A of the Indian Income Tax Act, 1922, or u/s 184(7) of the Income Tax Act, 1961, and that accordingly the appeal of the assessee was competent ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the assessee was entitled to renewal of registration for the assessment year 1960-61 ? "

6. From a consideration of the new deed, it appears that on and from the 1st January, 1959, the old partnership ceased to be effective and the new partnership came into existence by an oral agreement between the parties. This oral agreement was ultimately recorded in the deed dated the 29th August, 1960, but factually from 1st January, 1959, it was the new partnership which was admittedly carrying on the business of the firm.

7. This new partnership on an oral agreement was not entitled to be registered. Also the new partnership was not entitled in any event to ask for a renewal of the registration of the old partnership. The subsequent deed is an admitted and accepted document and, to the extent it records actual transactions and creation of mutual rights and liabilities in the relevant assessment year, it is conclusive.

8. Mr. Sukumar Mitra, learned counsel appearing for the assessee, has contended that there is no finding by the Tribunal that there was a reconstitution of the firm in 1959 and the facts as found by the Tribunal were conclusive. The court is precluded from finding other facts from the construction of the recitals in a document.

9. In support of his contentions he has relied on a decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More, . Here, the assessee claimed to be a trustee of a trust created by his wife. The trust property consisted of a house purchased for a large sum of money in 1940. Evidence in support was the deed of conveyance and the deed of trust. It was alleged that the property was the stridhan of the assessee's wife and a sum of rupees two lakhs had all along been available to the father-in-law of the assessee. The Tribunal rejected the contentions of the assessee for the year 1942-43 and also in the subsequent assessment years. The Tribunal held that the recitals in the two deeds were make-believe statements in the face of other facts and circumstances, viz., that the assessee's wife did not produce evidence of and the assessee was unable to explain any other source of income and that the sale deed in favour of the assessee was executed before the trust deed. The Supreme Court held that the Tribunal was within its jurisdiction to accept or reject the recitals in a deed and the High court could not interfere with such conclusion unless the conclusion was perverse or not supported by any evidence.

10. This decision does not appear to advance the case of the assessee in this reference.

11. In the instant case, the Tribunal has found as follows :

"We are, therefore, of opinion that the provision in the deed dated 29th August, 1960, that Sajjan Kumar was deemed to be a partner from 1st January, 1959, was of no consequence for the calendar year 1959 and did not affect the rights of the partners under the deed dated 5th March, 1956, which was operative

throughout the previous year 1959 ; that the terms of this deed have been fully acted upon and that by the firm acting on Phulwati Devi's letter dated 19th July, 1959, there was neither infringement nor violation of the partnership conditions under the deed."

12. The Tribunal has not accepted the earlier deed or the statements therein in preference to the subsequent deed as better evidence. But the opinion of the Tribunal is based only on the fact that the subsequent deed did not come into existence in the calendar year 1959 and did not affect the rights of the partners. This is not a finding of fact. This is a legal conclusion arrived at by the Tribunal of the effect of a subsequent deed upon an earlier deed. The Tribunal did not reject the subsequent deed. If both deeds are accepted, as it has been done, it cannot be said that the conclusion reached by the Tribunal was proper or legal.

13. In this view we are of the opinion that in the relevant assessment year the firm as a new firm was not in any event entitled to registration by way of renewal or otherwise and the old firm having ceased to exist on and from the 1st January, 1959, also was not similarly entitled to registration.

14. Accordingly, we answer question No. 2 in the negative and in favour of the revenue. In view of our answer to question No. 2, question No. 1 does not require any answer.

15. There will be no order as to costs.

Deb, J.

I agree.