
(2002) 08 RAJ CK 0047

In the Rajasthan High Court

Case No : Income Tax Reference No. 71 of 1986

Deep Enterprise

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Income Tax Act, 1961 — Section 185

Citation : (2003) 262 ITR 174

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Division Bench

Advocate : A.K. Sharma, for the Appellant; J.K. Singhi and Anuroop Singhi, for the Respondent

Judgement

1. On an application filed u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for our opinion :

"Whether, on the facts and circumstances of the case, the Tribunal was right in coming to the conclusion that the firm was not a genuine one on the strength of the statement made by the lady partner ?"

2. The assessee-firm was formed by means of partnership deed dated July 21, 1980, and the shares of the partners, the ratio of profits and losses of the partners have been shown in the partnership deed. The assessee had moved an application for registration of the firm. The Income Tax Officer examined one of the lady partners of the firm, namely, Smt. Meena Ramchand. After examining Smt. Meena Ramchand, the Income Tax Officer was of the view that the firm is not a genuine one and rejected the application moved for the registration of the firm.

3. In an appeal filed before the Appellate Assistant Commissioner, Jaipur, the Appellate Assistant Commissioner also found that the firm is not a genuine one and confirmed the view taken by the Income Tax Officer.

4. In an appeal filed before the Income Tax Appellate Tribunal, Jaipur, the

Tribunal has also confirmed the views taken by the Appellate Assistant Commissioner and the Income Tax Officer.

5. Mr. Sharma, learned counsel for the assessee, submits that if we read the statement of Smt. Meena Ramchand as a whole, it cannot be said that the partnership is not genuine. She knows about her share, capital contribution and shares of the other partners, therefore, it cannot be said that she is not a genuine partner in the partnership firm. Mr. Sharma, further submits that a partner can be a sleeping partner in the firm, if she does not know about the details of business of the firm, registration of the firm should not be refused.

6. Mr. Singhi, learned counsel for the Revenue, supports the view taken by the Tribunal.

7. We have gone through the statement of Smt. Meena Ramchand and also perused the orders passed by the authorities below. The Tribunal, after examining the material available on record and also the statement of Smt. Meena Ramchand, had come to the conclusion that the firm is not a genuine one. In para. (2) of the order passed by the Tribunal, the Tribunal has considered the facts and after considering the decision in the case of Mahavir Industrial Works Vs. Commissioner of Income Tax, and also in the case of Ganga Cut Piece Centre Vs. Commissioner of Income Tax, , the Tribunal has confirmed the view taken by the Appellate Assistant Commissioner that the firm is not a genuine one.

8. Whether the firm is genuine or not, is based on the finding of facts. All the three authorities, i.e., the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal, have found that the firm is not a genuine one. After considering the concurrent finding, we have very limited scope to interfere with such concurrent finding of fact. Even if we read the questions put to Smt. Meena Ramchand, she has categorically stated that she does not know about the partnership deed and she was not aware of the terms and conditions of the partnership deed and even she had not signed the partnership deed at the time of formation of the partnership firm.

9. A question was put to her whether she was told about the terms and conditions of the partnership deed, her answer was no. The firm had shown the payment of interest to Mrs. Meena Ramchand. But when the question was put to her whether she had received any amount of interest, her answer was that she did not receive any amount of interest on the deposited amount with the firm.

10. Even in the cross-examinations made by learned counsel for the assessee, when a question was put to her whether the partnership deed had been read over to her or whether she read it before signing the deed, her reply was no. Then again a question was put to her, whether still you confirmed that no documents or papers were signed by you with regard to partnership firm. Her reply was that many times her husband asked her to sign the documents, papers and cheques, etc., which she definitely signed.

11. The reply given by Mrs. Meena Ramchand shows that she was not aware of the contents of the partnership deed and when there is a concurrent finding of fact that the firm is not genuine one, we do not find any justification to interfere with such finding of facts.

12. In the result, we answer the questions referred to us by the Tribunal for our opinion in the affirmative, i.e., in favour of the Revenue and against the assessee. The reference petition stands disposed of.