
(1987) 02 OHC CK 0011
In the Orissa High Court
Case No : S.J.C. No. 58 of 1980

Hari Sahu

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Income Tax Act, 1961 — Section 184

Citation : (1987) 64 CTR 322

Hon'ble Judges : H.L. Agrawal, C.J;P.C. Misra, J

Bench : Division Bench

Advocate : A. Pasayat, for the Appellant; Standing Counsel, for the Respondent

Judgement

H.L. Agrawal, C.J.—The Income Tax Appellate Tribunal, Cuttack Bench, has drawn up a statement of case and referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to registration ?"

2. To put the matter in more clear terms, the point for consideration in this case is as to whether a mistake committed by the assessee in the books of account in allocating the shares of profit/loss in any particular accounting year can be corrected and reconciled in terms of the partnership agreement before the assessment is made.

3. In order to answer the question, it is necessary to state the relevant facts in brief.

4. The assessee-firm, M/s. Hari Sahu, was constituted by a partnership deed dated April 30, 1974, to carry on business with effect from April 1, 1974, with the following two partners ;

Profit Loss

(1) Hari Sahu 40% 90%

(2) Gauranga Sahu 25% 10%

5. Two minors, namely, Sankar Kumar Sahu and Kailash Chandra Sahu, were admitted to the benefits of the partnership giving them 25% and 10% share in the profit.

6. An application in Form No. 11 along with the original deed of partnership was filed on March 31, 1975, for registration of the firm. But the Income Tax Officer, on noticing from the books of account that the profits were not allocated according to the terms of the partnership deed and that whereas in the deed the share allocation had been made at 40 per cent. 25 per cent., 25 per cent. and 10 per cent., it was divided at 50 per cent., 20 per cent., 20 per cent. and 10 per cent., refused to grant registration for the year in question and the assessment was made taking the status of the firm as an "unregistered firm".

7. The assessment relates to the assessment year 1975-76. The assessment was made on March 31, 1978, and much before that, on October 8, 1975, itself, corrections in the allocation of profits in terms of the shares allocated in the partnership deed were made in the books of account.

8. On behalf of the assessee, it was submitted before the assessing officer that the inaccuracy in allocation of the profit in terms of the partnership deed was due to some inadvertence. But the Income Tax Officer did not accept the submission and did not take any notice of the subsequent corrections made in the books of account.

9. The assessee filed appeal before the Appellate Assistant Commissioner of Income Tax, but it was dismissed.

10. The assessee's appeal before the Tribunal also met with the same fate. The Tribunal took the view that the partnership deed which was produced did not evidence that firm but it spoke of a different firm with a different profit-sharing ratio.

11. Learned counsel appearing for the assessee submitted that since it was the first assessment of the firm, Form No. 11 which was filed for registration of the firm simply stipulated that the profit and loss would be adjusted in terms of the partnership deed unlike the statement contained in Form No. 12 which speaks of allocation of profit and loss having been already made in terms of the partnership deed. It was, therefore, submitted that the assessee was entitled to make necessary correction, and inasmuch as the allocation had already been made and the profit and loss account was already reconciled in accordance with the stipulations made in the partnership deed, there was no justification to refuse registration to the firm u/s 184 of the Income Tax Act.

12. I find force in the submission of learned counsel. The necessary re-allocation of the shares in the profit and loss account was made by the firm in terms of the

partnership deed much before the assessment and the result? was that the previous allocation was deemed to be substituted by this correction. The prescribed form of application (Form No. 12) also contemplates that the profit and loss would be divided before the assessment. The three cases which have been relied upon by Mr. Pasayat, namely, CIT v. Shahzadanand & Sons [1974] 37 Tax 25, Commissioner of Income Tax Vs. Hari Ram Khanna, and Commissioner of Income Tax Vs. Krishna Steels, , also fully support this view.

13. In the Punjab & Haryana case, CIT v. Shahzadanand & Sons [1974] 37 Tax 25, the partnership firm which started its business on April 1, 1945, was granted registration which was renewed from time to time up to the year 1956. A new partner was added on April 1, 1957, by which time the minor partner had also become a full-fledged partner on attaining majority. Registration for the newly constituted partnership was also granted and renewal was allowed up to the assessment year 1961-62. But, later on, registration was refused, inter alia, on account of a similar mistake, i.e., the profits had not been distributed amongst the partners in accordance with the shares specified in the partnership deed. There, the assessee had filed a revised return making adjustment entries, but that was not considered. The High Court held that inasmuch as the error in the actual allocation of profit was corrected subsequently, it could not be said that the shares to the partners were not given in terms of the partnership deed and the assessee should not be made to suffer on that account.

14. The Allahabad High Court has also taken a similar view in both the cases Commissioner of Income Tax Vs. Hari Ram Khanna, and Commissioner of Income Tax Vs. Krishna Steels, . In Commissioner of Income Tax Vs. Krishna Steels, , the Allahabad High Court has further observed that the prescribed Form No. 11 for application for registration of a firm does not require that the profits or losses should be divided or credited annually among the partners. Allocation of losses in the balance-sheet after application for registration but before assessment was, therefore, permissible and the firm was entitled to registration.

15. On behalf of the Department, reference was made to the case of Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, . In that case, registration was refused on the ground that the partnership deed did not contain any stipulation for sharing losses. That case has hardly any bearing on the case in hand inasmuch as the agreement contemplated under the Partnership Act for forming a partnership must contain an agreement between the partners to share the profit and the loss. In the absence of any stipulation in the partnership deed to share the loss, the partnership does not come into being.

16. In the present case, however, the stipulation in this regard is all complete, but registration was refused only on the ground of a clerical error in some entries made in the books of account.

17. The answer to the question must, therefore, be given in favour of the

assessee, but without any order as to costs.

P.C. Misra, J.

18. I agree.