

(1986) 08 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 136 of 1983

HARPRASAD MOHANLAL

APPELLANT

Vs

COMMISSIONER OF Income Tax AND ANOTHER.

RESPONDENT

Date of Decision : 06-08-1986

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1987) 57 CTR 264 : (1986) 57 CTR 264 : (1987) 168 ITR 740

Hon'ble Judges : G. G. Sohani, J

Bench : Division Bench

Judgement

G. G. SOHANI J. - The order in this case will also govern the disposal of Miscellaneous Civil Case No. 146 of 1983.

As directed by this court, the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in refusing registration to the firm ?"

The material facts giving rise to these references, briefly, are as follows :

The assessee is a firm carrying on business, in the name of M/s. Harprasad Mohanlal. Miscellaneous Civil Case No. 136 of 1983 relates to the assessment years 1962-63, 1963-64 and 1966-67 while M.C.C. No. 146 of 1983 relates to the assessment year 1968-69. For these assessment years, the assessee claimed registration. The Income Tax Officer held that the business carried on in the name of M/s. Harprasad Mohanlal was the individual business of the assessee. The Income Tax Officer rejected the contention of the assessee that there was a partition of the Hindu undivided family consisting of Harprasad and his sons, and that the amount which had fallen to the shares of the members of the Hindu undivided family on partition was contributed by them towards the capital of a firm, which was constituted by them. The Income Tax Officer further held that the contention of the assessee that there was ancestral property which formed

the nucleus of the joint family property which was partitioned between Harprasad and his sons was false and that no genuine firm had come into existence. The Income Tax Officer, therefore, refused registration. On appeal, the Appellate Assistant Commissioner upheld that finding. On further appeal before the Tribunal, the Tribunal, on the basis of the material on record, found that a genuine firm had not come into existence. The Tribunal, therefore, dismissed the appeal preferred by the assessee. The application submitted by the assessee for making an application u/s 256(2) of the Income Tax Act, 1961, before this court which was allowed. That is how the aforesaid question of law has been referred to this court for its opinion.

Learned counsel for the assessee contended that there was sufficient material on record for coming to the conclusion that the self-acquired property of Harprasad was thrown by him into the common hotchpot; that thereafter it was divided between himself and his sons and that the amount received by each member was contributed towards the capital of a firm, which was constituted by the assessee and his sons, as evidenced by the deed of partnership. Reliance was placed on the decision of the Bombay High Court in *Kisarsing Mohansing Balwar and Others Vs. Vishnu Balkrishna Jogalekar*, . It was also contended that the Tribunal ignored the evidence produced by the assessee who had filed suits in the name of the firm; that a mining lease had been obtained in the name of the firm and that a deed of declaration was executed by Harprasad on July 17, 1968, declaring partition of the joint Hindu family. Learned counsel for the assessee contended that even if the assessee had failed to prove that there was a partition of ancestral property, the assessee had failed to prove that there was a partition of ancestral property between Harprasad and his sons, there was sufficient material for holding that the self-acquired property of Harprasad was impressed with the character of joint family property and that after partitioning that property, Harprasad and his sons had formed a partnership, for which registration could not be refused. In reply, it was contended on behalf of the Revenue that whether a firm was or was not genuine was a finding of fact and that it was for the Tribunal to reach a finding on that question.

The short question for consideration is whether in the instant case, the Tribunal was right in law in refusing registration to the firm. Now, it is well-settled that registration could be refused if the Tribunal came to the conclusion that no genuine firm had come into existence. The case which has now been put forward on behalf of the assessee that the self-acquired property of Harprasad was impressed with the character of Hindu undivided family property the moment he effected a partition of that property is inconsistent with the case which had been set up by the assessee before the Income Tax Officer. The case of the assessee that the firm constituted by Harprasad and his sons was genuine was founded on the facts that there was ancestral property of Harprasad which was partitioned between Harprasad and his sons and that they formed a partnership the capital of which consisted of the amount contributed by each partner which had fallen to his share on partition. This story put forward by the assessee was found to be

false to be Income Tax Officer and that finding was upheld by the Appellate Assistant Commissioner and the Tribunal. Once it was found by the Tribunal that the facts pleaded by the assessee to prove the constitution of the firm were not established, the Tribunal held that the facts that suits were filed in the name of the firm or that a mining less was obtained in the name of the firm, were not sufficient for holding that a genuine firm had come into existence. The facts that subsequent to the assessment years in question, Harprasad had executed a deed of declaration on July 17, 1968, that his belief that his business was owned by the Hindu undivided family was ill-founded and that he had impressed it with the character of joint family property could not be decisive for holding that prior to that declaration, a genuine firm had come into existence. It was for the Tribunal to reach a finding on the question as to whether there was or was not a genuine partnership firm (See *Ratanchand Darbarilal Vs. Commissioner of Income Tax, M.P.*, . The Tribunal having found that no genuine partnership firm had come into existence in the assessment years in question, the Tribunal was justified in refusing registration to the firm.

For all these reasons, our answer to the question referred to this court is in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of these references.