

(1964) 02 PAT CK 0011

In the Patna High Court

Case No : Misc. Judicial Case No. 607 of 1960

Himalaya Engineering Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-02-1964

Acts Referred:

Income Tax Act, 1961 — Section 26A, 66(2)

Citation : AIR 1964 Patna 415 : (1965) 57 ITR 762

Hon'ble Judges : V. Ramaswami, C.J.; R.K. Choudhary, J

Bench : Division Bench

Advocate : Brajeshwar Prasad Sinha, V.D. Narayanand Shambhu Sharan, for the Appellant; Tarkeshwar Prasad, for the Respondent

Judgement

1. Up to and including the assessment year 1955-56 Messrs. Himalaya Engineering Company, Hazaribagh was constituted of two partners. (1) Shri Durga Ram, and (2) Shri Kirpa Ram, with equal shares. The firm was granted registration u/s 26-A for the years up to the assessment year 1955-56. For the assessment year 1956-57 the assessed made an application for registration of the firm as constituted under the partnership deed dated the 26th April, 1955. Under this document the partners of the firm were as follows :-

(1) Durga Ram Kashyap -/5/ share

(2) Kirpa Ram Kashyap -/5/- "

(3) Man Singh Kashyap -/3/- "

(4) Karan Singh Kashyap -/3/ "

The two new partners were the sons of the old partners Kirpa Ram and Durga Ram, respectively. The shares of Kirpa Ram and Durga Ram were reduced from 8 annas to 5 annas each and their sons were, given 3 annas each in the profits of the firm. The Income Tax Officer held that the deed of partnership was not genuine and hence refused registration u/s 26-A of the Income-tax Act. On

appeal the Appellate Assistant Commissioner took the same view. On further appeal the Income Tax Appellate Tribunal took the view that Karan Singh and Man Singh were not genuine partners of the firm and deed of partnership dated the 26th April, 1955, could not be registered u/s 26-A of the Income Tax Act. It was held by the Income Tax Appellate Tribunal that the instrument of partnership was a sham and nominal document and was not intended to be acted upon.

2. u/s 66(2) of the Income Tax Act the Income Tax Appellate Tribunal has stated a case on the following question of law :-

"Whether on the facts and circumstances the firm constituted under the deed of partnership dated the 26th April, 1955, should have been registered by the Income Tax Authorities u/s 26-A of the Income Tax Act?"

3. On behalf of the assessee learned Counsel submitted that there was no material to support the finding of the Tribunal that the instrument of partnership dated the 26th April, 1955, was a sham and nominal document: Learned Counsel put forward the argument that none of the reasons given by the Tribunal supports the inference drawn by it that Man Singh and Karan Singh were not, real partners of the firm. It was pointed out by that learned Counsel that the Tribunal has stated in the first place that no capital was contributed by Man Singh or Karan Singh. The Tribunal has also referred to the circumstance that the charge of the constitution of the firm was not notified to the Banks in which the assessee had accounts in the name of the firm. The argument was stressed on behalf of the assessee that these circumstances have no relevant bearing on the question whether the partnership deed dated the 26th April, 1955, was a genuine transaction. In our opinion the argument put forward on behalf of the assessee is well founded and must be accepted as correct.

In our opinion the present case is governed by the principle laid down by the Supreme Court in Umacharan Shaw and Bros. Vs. Commissioner of Income Tax, West Bengal, . In this case the claim for registration of the firm was rejected by the Income Tax Officer on the ground that there was no separate capital account of the partners and the share of profits of each partner was not credited in his account in the ledger. The decision of the Income Tax Officer was affirmed by the Tribunal which held that there was no genuine partnership, especially as the existence of the partnership was not disclosed to the bankers or to the excise authorities who issued the license for the shops and the formation of the partnership was in violation of the Bengal Excise Act, 1911. It was, however, held by the Supreme Court, upon an analysis of the circumstances of that case, that there was no relevant material upon which the Income Tax Officer or the Appellate Tribunal could come to the conclusion that the firm was not genuine and that there were mere surmises or conjectures and the conclusion was the result of suspicion which could not take the place of proof. It was accordingly held by the Supreme Court that the firm should be registered u/s 26-A of the Income Tax Act for the assessment year in question.

A similar view has been expressed by this High Court in Sahabuddin Mohammad Raza (Siwan) Vs. Commissioner of Income Tax, . In this case also it was pointed out by this High Court that the fact that there was no separate account of the partners or that no share capital was contributed by some of the partners originally is not a ground for refusing registration of the firm. The same principle has been expressed by the Madras High Court in S.S.K. Haja Allaudin Maracair Ammapatnam Vs. The Commissioner of Income Tax, Excess Profits Tax, Madras, , where it was pointed out by the Madras High Court that merely because no share capital was distributed or was contributed by the sons at the time of the original partnership it cannot be said that the partnership was not a real partnership but merely a make-believe affair. In our opinion the principle laid down in these authorities applies to the present case. There was no material before the Income Tax Authorities in this case to support the conclusion that the partnership constituted under the partnership deed dated the 26th April 1955, was not a valid and genuine partnership.

We are of opinion that in the facts and circumstances of this case the firm constituted under the deed of partnership dated the 26th April, 1955, is a genuine partnership and should have been granted registration u/s 26-A of the Income Tax Act. We accordingly answer the question of law referred by the Income Tax Appellate Tribunal in favour of the assesses and against the Income Tax Department. In the circumstances of the case we do not propose to make any order as to costs.