

(1996) 05 GAU CK 0042

In the Gauhati High Court

Case No : Income-tax Reference No. 13 of 1990

J.D. Enterprises

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 31-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 184, 185
Partnership Act, 1932 — Section 30

Citation : (1996) 221 ITR 67

Hon'ble Judges : N. Surjamani Singh, J; D.N. Baruah, J

Bench : Division Bench

Advocate : D.K. Talukdar and U. Baruah, for the Appellant; A.K. Saraf, for the Respondent

Judgement

D.N. Baruah, J.—Pursuant to the direction given by this court by a judgment and order, dated August 2, 1988, passed in Civil Rule No. 3(M) of 1986 u/s 256(2) of the Income Tax Act, 1961, the following two questions have been referred by the Income Tax Appellate Tribunal for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Form No. 11 filed along with the deed was defective and if so whether the said defect is rectifiable under the provisions of Section 185(2) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in reversing the order of the Appellate Assistant Commissioner granting registration of the firm ?"

2. The Income Tax Officer, A-Ward, Digboi, while passing the order u/s 185 found that the assessee-firm was constituted by a deed of partnership dated February 23, 1978, with three partners, namely, (1) Shri Jogendranath Deka ; (2) Shri Dhiren Deka ; and (3) Shri Jiten Deka. Shri Khanin Deka, minor son of Shri Jogendranath Deka, was admitted to the benefits of the partnership. According to

the Income Tax Officer Clause (5) of the said deed provided that the profits and losses of the partnership to be divided and borne by the partners in equal proportions and there was no other clause specifying individual shares in the profits and losses of the partners or the minor. Therefore, the Income Tax Officer held that the minor had been made liable to share the losses. When this matter was brought to the notice of the assessee, it was contended that it had been clarified in the partnership deed that the minor had been admitted to the benefits of the partnership with such charges of profit with rights and liabilities as per Section 30 of the Indian Partnership Act, 1932. It could not be said that the minor was made liable for the losses. The Income Tax Officer disagreed with the submission of the assessee. He was of the view that the deed must specify the share of each partner in the profits and losses of the firm and, therefore, according to the Income Tax Officer, the partnership deed was invalid and the firm could not be granted registration for the year under consideration. The assessee took up the matter before the Appellate Assistant Commissioner of Income Tax. The Appellate Assistant Commissioner allowed the appeal of the assessee holding that Clause (5) of the partnership deed relied on by the Income Tax Officer would not reasonably be interpreted as repugnant to the validity of genuineness of the firm, agreeing with the contentions of the assessee to the effect that the information contained in the application for registration carried sufficient relevance for the purpose of determining the genuineness of the firm and the same should not be ignored. Accordingly, the Income Tax Officer was directed to allow registration.

3. The Revenue preferred an appeal before the Income Tax, Appellate Tribunal contending, inter alia, that the Appellate Assistant Commissioner was wrong in directing registration of the firm under the facts and circumstances of the case.

4. The Appellate Tribunal after hearing the matter held that a minor could be made liable to share losses of the firm to the extent of his share in the firm as per the provisions of Sub-section (3) of Section 30 of the Indian Partnership Act. The Appellate Tribunal found that the deed was valid inasmuch as the said deed of partnership specified the shares of the partners in losses. The Appellate Tribunal, however, found that it was unable to accept the assessee's claim for registration in the present case as the declaration made by the assessee in the application for registration in Form No. 11 with regard to the sharing of losses among the various partners and the minor was not in accordance with the partnership deed.

5. The assessee thereafter, filed an application stating that there was a mistake apparent in the order of the Appellate Tribunal and that it requires rectification. It was submitted that from the order of the Appellate Tribunal, it was clear that application in Form No. 11 filed by the assessee was found to be defective and in the circumstances the provisions of Section 185(2) would come into play and the Income Tax Officer should have been directed to allow the assessee to remove the defects stipulated by Section 185(2). The Tribunal rejected the said

application holding that there was no mistake in the order of the Appellate Tribunal which required to be rectified. The Appellate Tribunal in its order on the appeal did not find that Form No. 11 was defective.

6. Again the assessee filed another miscellaneous application which was also rejected.

7. The assessee requested the two questions to be referred. However, the Tribunal declined to draw up a statement of case for reference to this court u/s 256(1). The assessee, therefore, moved this court under Section 256(2) in Civil Rule No. 3(M) of 1986 and this court directed the Tribunal to make the reference.

8. We have heard learned counsel for the parties.

9. Before we consider the rival contentions of the parties, it will be apposite to examine the deed of partnership and also to look to some of the relevant provisions of the Indian Partnership Act as well as the Income Tax Act. We find the deed of partnership at pages 36 to 39 of the paper book. In the said deed, it has been recited as under :

"Be it noted here that Sri Khanin Deka, son of Sri J.N. Deka, resident of Doom Dooma, P.O. Doom Dooma P.S. Doom Dooma Sub-Registration office at Tinsukia, Tinsukia Sub-Division in the District of Dibrugarh, Assam, a minor son has been admitted to the benefits of partnership with such share of profits as has been provided in this instrument with all the rights and liabilities as per Section 30 of the Indian Partnership Act, 1932, to which the father and natural guardian Sri Jogendra Nath Deka has given his full consent."

10. In Clause (5) of the said deed of partnership at page 37 of the paper book, it has been recited as under :

"That the profits and losses of the partnership business shall be divided and borne by the parties in equal proportions after adjustment of all expenses of the partnership business incidental to the business only together with any liabilities of Income Tax of the partnership-firm. The Income Tax liabilities of the parties shall have to be borne by the parties themselves."

11. Section 30 of the Partnership Act deals with the provisions relating to minors admitted to the benefits of the partnership. A minor may not be a partner in any firm but with the consent of all the partners he may be admitted to the benefits of the partnership. Such a partner has a right to such share of the property and of the profits of the firm as may be agreed upon. Under Sub-section (3) of Section 30 such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act. Admission of a minor in a firm to the benefits of partnership is valid. However, a minor cannot be made liable for any loss as long as the partnership deed does not make the minor a full partner. A partnership deed cannot be regarded as invalid on the ground that a guardian has entered into a contract on behalf of the minor. However, if all the partners including the minor are made liable for both profits and losses by a deed of

partnership such deed cannot be said to be valid.

12. The Supreme Court in Commissioner of Income Tax, Mysore Vs. Shah Mohandas Sadhuram, held thus (headnote of AIR 1966 SC) :

"Where in a partnership deed a recital expressly stated that it was the major members who had decided to constitute the partnership and admit the minors to the benefits thereof, the rest of the clauses must be construed in the light of this recital."

13. It is also an established principle of law that in order to construe a partnership deed, the entire document must be read as a whole and a reasonable construction should be placed on it. In a document where several clauses appear, what clauses dominate the document should be found out with a view to ascertain the real intentions of the partners. When the intention of the executants of the document is clear from the dominant clause therein which states that the minor is admitted only to the benefits of the partnership, the other clauses of the document should be so read as to reconcile with that manifestly brought out intention of the parties to the document.

14. A guardian who himself is a partner can, along with other major partners, give consent in regard to the admission of a minor to the benefits of the partnership and as a guardian on behalf of the minor can agree that the minor be admitted to the benefits of the partnership with or without certain conditions.

15. In Kishore Chand Ramji Dass Vs. Commissioner of Income Tax, the Punjab and Haryana High Court held that the mere fact that the shares of some minors in a firm were shown collectively and the share of each one of them was not separately stated in express words, is not a sufficient ground for refusing registration of the firm, if it is clear from the context beyond doubt that the minors took the shares allotted to them collectively in equal shares.

16. In the instant case, Shri Khanin Deka, minor son of Sri J.N. Deka, was admitted to the benefits of the partnership with such shares of profits as has been provided in this instrument with all the rights and liabilities as per Section 30 of the Indian Partnership Act. In Clause (5) of the deed of partnership it has been recited that the profits and losses of the partnership business shall be divided and borne by the parties in equal proportions after adjustment of all expenses of the partnership business.

17. Therefore, it is evident that the intention of the parties was to admit Khanin Deka to the benefits of the firm with the rights and liabilities as per Section 30 of the Partnership Act. In the said clause, it is abundantly made clear that the minor was admitted to the benefits of the firm and his rights and liabilities should be governed by Section 30 of the Indian Partnership Act and u/s 30, a minor cannot be saddled with liabilities and he is not required to share losses though in Clause (5), it has been mentioned, "the profits and losses of the partnership business shall be divided and borne by the parties in equal proportions after

adjustment of all expenses of the partnership business incidental to the business only together with any liabilities of Income Tax of the partnership firm. The Income Tax liabilities of the parties shall have to be borne by the parties themselves". It has, however, not been specifically mentioned that the minor would not be liable for losses. As held by the apex court, in order to give proper interpretation to any clause of a document, the document must be read as a whole and on the basis of the dominant clause of the document the intention of the parties to the document should be ascertained and if there is anything which is contrary to the dominant clause that should be ignored. Here the main clause very clearly shows that the minor was admitted to the benefits of the firm and, therefore, we do not find anything wrong in it. Therefore, Form No. 11 filed along with the deed cannot be said to be defective. The Tribunal, in our opinion, was not justified in holding that Form No, 11 filed along with the deed was defective. As there was no defect, the question of rectification under the provisions of Section 185 of the Income Tax Act does not arise. However, we feel that in an appropriate case such defects can be cured.

18. In view of the above, questions Nos. 1 and 2 are answered in the negative, against the Revenue and in favour of the assessee.