(1991) 11 RAJ CK 0010

In the Rajasthan High Court

Case No : Income Tax Case No. 6 of 1989

Kankaria Textiles APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:
Income Tax Act, 1961 — Section 185, 256

Citation : (1993) 200 ITR 408

Hon'ble Judges : V.K. Singhal, J;Jasraj Chopra, J

Bench : Division Bench

Advocate : N.P. Gupta, for the Appellant; D.S. Shishodia, for the Respondent

Judgement

V.K. Singhal, J.—In the petition submitted u/s 256(2) of the Income Tax Act, 1961 (hereinafter to be referred to as the "Act"), the following two questions have been raised :

"1. Whether, on the facts and in the circumstances of the case, in view of the individual assessment of the partners having been completed prior to the assessment of the firm, the firm could not be refused registration under the Income Tax Act, 1961 ?

2. Whether on the facts and in the circumstances of the case, there was material before the Tribunal to come to the conclusion that the partnership-firm constituted by a partnership deed dated August 5, 1981, was not a legal partnership, and was not entitled to registration under the Income Tax Act ?"

2. In the present case, the firm was constituted as per the partnership deed dated August 5, 1981. The Income Tax Officer, B-Ward, Pali, passed an order u/s 185 of the Income Tax Act that since no capital was contributed by Smt. Manju Kumari, a valid partnership has not come into existence.

3. Shri N. P. Gupta, learned counsel for the assessee, has contended that the firm has operated for about three months in this year and thereafter she has

contributed Rs. 70,000 in the subsequent year. Mr. Gupta has submitted that, in the present case, the question of interpretation of the clauses of the partnership deed and the provisions of the Income Tax Act is required in the sense that, if a partner has not contributed any capital but has undertaken liability for losses, still whether it could be said that a genuine partnership has come into existence or not. The assessment of partners was completed in respect of their share income from the firm.

4. We are of the opinion that a question of law does arise and, therefore, we direct the Income Tax Appellate Tribunal to prepare the statement of case and refer the above questions for decision to this court within four months from the date of receipt of this order.

5. No order as to costs.

