
(1960) 02 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No. 1 of 1956

Kruthartha Acharya

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-02-1960

Acts Referred:

Income Tax Act, 1922 — Section 26A, 6(6B)

Citation : AIR 1960 Ori 183

Hon'ble Judges : R.L. Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : D. Bhuvan, for the Appellant; R.N. Misra, for the Respondent

Judgement

Narasimham, C.J.—This is a reference by the Income Tax Tribunal, Calcutta Bench, u/s 66 (1) of the Indian Income Tax Act.

2. The material facts are as follows: One Kruthartha Acharya was formerly carrying on the business of manufacturing and selling handloom cloth, under the name of Sambalpur Bastralaya. Subsequently in 1945, he decided to convert the business into a partnership taking some of his erstwhile employees as his partners. Accordingly on 27-12-1945, a deed of partnership (Ext. A-1) was drawn up, in which he and four other employees were mentioned as partners. The fifth partner was said to be one Rabindra Nath Pradhan minor son of one Krishna Chandra Pradhan. The shares of the various partners were specified in this document. Subsequently, on 25-7-1951 the same partners executed another deed of partnership (Ext. A) in which it was recited that as the partnership deed of 1945 was not drafted properly and there were many legal and technical difficulties, the necessity arose for executing a fresh deed of partnership.

In this document also, five persons including the minor Rabindra Nath Pradhan were mentioned as partners and the capital contributed by them for investment in the business was also mentioned and the shares of the profits to be distributed amongst the partners, including the minor, were also specified. Similarly, the

shares of the loss to be borne by the four major members of the partnership were also specified and so far as the minor partner Rabindra Nath was concerned, it was expressly stated that "he shall bear 110 loss till he attains majority". By another document dated 20-2-1952 (Ext. D) described as deed of Rectification of the deed of partnership dated 25-7-1951, it was declared by the four major partners that the minor Rabindra Nath was only "a minor admitted to the benefits of this partnership till he attains majority."

3. An application was then made for registration of the partnership business u/s 26A of the Income Tax Act. The Income Tax Officer, rejected the application holding that the minor was made a full-fledged partner and was not merely admitted to the benefits of partnership and consequently the partnership was void. He passed three assessment orders for the assessment years 1951-52, 1952-53 and 1953-54 on the basis of the income of the business for the previous years, the assessee being Kruthartha Acharya himself. On appeal the appellate Assistant Commissioner set aside the order of the Income Tax Officer and directed registration u/s 26A of the Income Tax Act observing that on a true construction of the partnership deed of 1951 and the deed of rectification dated 20-2-1952 the minor was not a full-fledged partner but was only admitted to the benefits of partnership. He further observed that though the partnership came into existence only on 25-7-1951 the assessee was entitled to the benefits of registration u/s 26A for the assessment years 1951-52 and 1952-53 also on the basis of some departmental instructions issued by the Income Tax authorities.

On further appeal the Income Tax Appellate Tribunal reversed the decision of the Appellate Assistant Commissioner and held, on a construction of the deed of partnership of the year 1951, that the minor was taken as a full-fledged partner of the firm and not merely admitted to the benefits of the partnership. Hence the Tribunal thought that the partnership was void ab initio. It however omitted to consider the effect of the Deed of Rectification (Ext. D) as presumably its attention was not specifically drawn to it.

4. On these facts as directed by this Court the Tribunal stated the following questions:

(i) Whether on a true construction of the deed of partnership dated 25-7-1951 and the deed of Rectification dated 20-2-1952, the minor Rabindra Nath can be said to have been admitted only to the benefits of the partnership.

(ii) Whether, on the facts and in the circumstances of this case, registration u/s 26A of the Indian Income Tax Act should have been granted to the firm as constituted by the said deed dated 25-7-1951 and the deed of rectification dated 20-2-1952, for any one or more of assessment years 1950-51, 1952-53 and 1953-54?

5. QUESTION NO. (I):

Section 30(1) of the Partnership Act says that though a minor may not be a

partner of a Firm, yet with the consent of all the partners, for the time being, he may be admitted to the benefits of the partnership doubtless, this assumes that independent of the minor there must be a partnership that may be either in existence or that may come into existence. In Section 2 (6-B) of the Income Tax Act the position has been clarified by saying that the terms "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership. Hence, the limited question for consideration is whether the deed of partnership (Ext. A) and the deed of rectification (Ext. D) taken together would show that the minor Rakindranath was only admitted to the benefits of partnership or else whether he was treated as a full-fledged partner.

6. It will be noticed that though the minor is given a share in the profits of the Firm, it is expressly stipulated that he "shall bear no loss till he attains majority". No contribution was called for from the minor, but it was mentioned that the capital which was in existence at the time of the constitution of the partnership shall be deemed to have been contributed by all the partners including the minor. Doubtless in Clause 6 of the deed of partnership (Ext. A) there was a stipulation to the effect that further contribution may be called for from every one of the partners including the minor and if such contribution was not made, interest was leviable at six per cent per annum. But in the deed of rectification (Ext. D) it was clearly stated that the minor was entitled only to the benefits of the partnership and that he shall not be treated as a partner for any other purpose. The deed of Rectification thus removes the onerous burden imposed on the minor by Clause 6 of the deed of partnership of 1951 (Ext. A). There can, therefore be no doubt that the minor was not a full-fledged partner but was only admitted to the benefits of partnership.

The Tribunal's finding is vitiated by its failure to take into consideration the deed of rectification and also its omission to give due weight to the stipulation in the main deed of partnership of 1951 to the effect that the minor shall not be liable to bear any loss till he attains majority.

7. The Tribunal also failed to give due consideration to the case law on the subject. In *Jakka Devayya and Sons, Tenali Vs. Commissioner of Income Tax, Madras*, where also a deed of partnership was drawn up, including a minor as one of the partners, it was held that the entire document would not be void ab initio but must be held to be a valid deed of partnership so far as the major partners were concerned while the minor should be deemed to have been merely admitted to the benefits of partnership. This was followed in another Madras case reported in *P. Vincent and Others, Coimbatore (by manager Mr. Paul Vincent) Vs. Commr. of Income Tax, Madras*, and in a Patna case reported in *Sahai Brothers Vs. Commissioner of Income Tax*, . In the Patna case some majors and minors were both included in the deed of partnership and it was stipulated that the minors were liable for the loss borne by the partnership firm. Notwithstanding

the existence of this clause the learned Judge held, as a matter of construction, that for the purpose of the Income Tax Act it must be held that the minors were not full-fledged partners but were only admitted to the benefits of partnership, relying on the aforesaid Madras decision. The instant case is more in favour of the assessee than the Patna case because here there was an express stipulation to the effect that the minor was not liable for any loss sustained by the business.

8. There is also a reported decision of the Bombay High Court in *Dwarkadas Khetan and Co. Vs. Commissioner of Income Tax, Bombay City, Bombay*, where a deed of partnership in which there were three major partners and one minor partner, was construed as a valid deed of partnership and it was held that the minor was only admitted to the benefits of the partnership.

9. QUESTION NO. (ii)

The assessee was therefore entitled to registration u/s 26A of the Income Tax Act for the year 1953-54.

But in respect of the assessment for the year 1951-52 which is based on the income of the firm during the previous financial year 1950-51 (i.e. from 1-4-1950 to 31-3-1951) the assessee cannot claim registration under the aforesaid section because the finding of the Appellate Assistant Commissioner seems to be that the partnership was created only from the 25th July 1951 (the date of Ex. A)--several months after the expiry of the financial year. In respect of the assessment for the year 1952-53 based on the income of the financial year 1951-52 (i.e. from 1st April 1951 to the 31st March 1952) the position is slightly difficult. The partnership came into existence on 25th July 1951 about three months and 25 days after the commencement of the financial year.

10. The case law is not quite clear as to whether for the purpose of registration u/s 26A of the Income Tax Act the instrument of partnership should be in existence at the very inception of the accounting year or before the expiry of that year. In *P.R. Chowdhary and S. Gangoli Vs. The State of U.P.*, their Lordships of the Supreme Court left this question open though they definitely held that the instrument of partnership should have been in existence in the accounting year in respect of which the assessment is being made. But in favour of the assessee it may be urged that during the twelve months of the financial year 1951-52 the partnership was in existence for more than eight months.

The departmental instructions (vide Circular No. 14 (XXV-2) of 1952, as clarified by Circular No. 49 (XXV-10) D of 1955 issued by the Central Board of Revenue) also seem to indicate that so long as partnership was genuine registration should not be refused merely on the ground that the instrument of partnership was drawn up after the commencement of the year. Hence the assessee is entitled to registration for the year 1952-53 also.

11. The questions of law formulated by the Income Tax Tribunal are accordingly answered as follows:

Question No. (i): Yes, the minor Rabindranath Pradhan was only admitted to the benefits of the partnership.

Question No. (ii) : Registration u/s 26A Income Tax Act should be granted to the Firm for the assessment years 1952-53 and 1953-54 but should be rejected for the assessment year 1951-52.

12. As the petitioner has succeeded substantially he is entitled to costs. Hearing fee is assessed at Rs. 100/- (Rupees one hundred only).

Barman, J.

13. I agree.