
(1969) 07 OHC CK 0003
In the Orissa High Court
Case No : S.J.C. No. 70 of 1964

Narasingmal Premchand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-07-1969

Acts Referred:

Income Tax Act, 1922 — Section 26A
Income Tax Act, 1961 — Section 256(1), 25A

Citation : (1969) 35 CLT 1039

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : M.S. Mohanty and B.K. Mohanty, for the Appellant; D. Mohanty, for the Respondent

Judgement

R.N. Misra, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961. At the instance of the Assessee, the Income Tax Tribunal has referred the following question for the opinion of the Court:

Whether in the facts and circumstances of the case, the Tribunal was justified in holding that no genuine firm came into existence under the deed dated 12-11-1958 and confirming the rejection of registration u/s 25A by the authorities below.

The facts appearing in the statement drawn up by the Tribunal, so far as relevant for decision of the point, are as hereunder. Narsingmal, Premchand and Pokhraj constituted a partnership in the name and style of "Narsingmal Premchand" under a partnership deed dated 25-1-1948. In the said firm, Narsingmal, Premchand and Pokhraj had 6 annas 3 pies, 5 annas 3 pies and 4 annas 6 pies shares respectively, and the said firm had been granted registration u/s 26A of the Income Tax Act, 1922, for the assessment years up to 1959-60 inclusive.

For the assessment year 1960-61 registration was claimed on the basis of an application dated 18-5-1959. It was stated that a new deed of partnership was

drawn up on 12-11-1958, that is, the opening day of the accounting year, and the firm "Narsingmal Premchand" was reconstituted. Deepchand, Shantilal and Shibraj, 3 of the employees of the old firm, were admitted into the partnership as partners, while one Bhamarlal, a minor, being the son of a deceased employee was admitted into the benefits of the partnership and under the new deed dated 12-11-1958 the interests of the partners in the profits and loss of the firm were changed, and the minor was admitted in to the benefit to the extent of 6 pies only.

The Income Tax Officer refused to grant registration to the firm mainly on three grounds:

(a) The alleged reconstituted firm was exploiting the licence granted by the excise authorities to the old firm of 3 partners without obtaining either a fresh licence or getting the old licence suitably amended, and therefore the partnership was illegal;

(b) The change in the constitution of the firm was not notified to the sales tax authorities contemporaneously, and on 2-3-1959 one of the partners of the old firm made an application for renewal of the certificate of registration and gave a declaration duly verified wherein it was indicated that, the partnership was constituted by 3 persons Narsingmal, Premchand and Pokhraj which clearly showed that the alleged firm on the basis of the document dated 12-11-1958 had not come into existence; and

(c) The application for registration was belated having been filed more than 6 months after the constitution of the firm.

The Assessee went up in appeal, and the Appellate Assistant Commissioner maintained the order refusing registration only on one ground, namely, that a genuine firm had not been in existence on the basis of the deed dated 12-11-1958. The Appellate Assistant Commissioner's conclusions were mainly based upon the declaration made by one of the partners in the renewal application of the registration under the Sales Tax Department. Upon further appeal to the Tribunal the views of the Appellate Assistant Commissioner were accepted and registration was refused. Thereupon, the Assessee applied for a reference to this Court, and the Tribunal has made the reference of the question quoted above.

2. A firm, in order to entitle itself to registration u/s 26A of the Income Tax Act, 1922, was to satisfy the following requirements:

(a) It should be constituted under an instrument of partnership;

(b) Such instrument must specify the individual shares of the partners; and

(c) The partnership must be valid, genuine and must Actually exist in accordance with the terms specified in the instrument.

Once these conditions are satisfied, a firm becomes entitled to registration on an

application being made by the partners at such time and containing such particulars and being in such form and verified in such manner, as is prescribed by the rules under the Income Tax Act, 1922. The ultimate objection which has been sustained against registration is that there was no partnership valid and genuine in existence during the year to entitle the Assessee to register the firm u/s 26A of the Income Tax Act, 1922. It was the case of the partners that a new firm came into existence with effect from 12-11-1958. The verified statement dated 2-3-1959 made in the application for renewal of registration under the Orissa Sales Tax Act clearly contains an admission that even on 2-3-1959 the firm continued to be constituted of 3 partners only, and the profit and loss were to be shared in the proportion as indicated under the deed of 1948. It is well settled in law that an admission is the best evidence of a point in issue, and though not conclusive, is decisive of the matter unless successfully withdrawn or proved erroneous, see *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, . In this, case the Assessee had taken no steps either to explain the circumstances, under which the declaration in the renewal application was made, nor did they lead evidence to prove and establish that the statement contained in the said declaration was erroneous. In the circumstances, therefore, there was no material placed before the Revenue to help them to conclude that the statement contained in the renewal application was erroneous and did not indicate the true state of affairs existing on 2-3-1959.

4. Mr. Mohanty appearing for the Assessee contended that even if there was no partnership in existence on 12-11-1958, it cannot be denied that by the time the application for registration u/s 26A was made, the new firm had come into existence. It was further submitted by him that at any time during the year the instrument of partnership could be drawn up, and on the basis of such an instrument registration could be granted in case a genuine firm had come into existence from the beginning of the year as alleged. It is difficult to accept this contention in view of the fact that the Assessee had come up with the positive case that the firm was to be reconstituted in terms of the new instrument with effect from 12-11-1958. In the face of such a positive assertion, it becomes difficult to accept Mr. Mohanty's submission that if the firm had not been there from 12-11-1958, it had at least been in existence by the time the application of registration u/s 26A was made.

4. The finding that a genuine firm did not exist in terms of the instrument of the partnership is essentially a question of fact. It has been held by the Patna High Court in *P. Banerjee Vs. Commr. of Income Tax*, , as follows:

It is, therefore, clear that the registration of a firm u/s 26A cannot be granted unless the income tax Officer is satisfied that there was a firm in existence constituted as shown in the instrument of partnership. In the present case the position was examined by the income tax Appellate Tribunal which found upon examination of the materials produced in this case that the partnership was not in existence and the deed of partnership was a bogus transaction. As I have said,

the question at issue is a question of fact and the High Court has no jurisdiction to interfere with the finding of the Tribunal on such a question.

The self-same view seems to have been adopted by the Supreme Court in *Ladhu Ram Taparia Vs. Commissioner of Income Tax (Central), Calcutta*, where the Court came to hold that whether a genuine firm was in existence during a particular year did not give rise to a question of law. In the circumstances, it cannot be said that a question of law really arose from out of the appellate judgment of the Tribunal in this case.

5. u/s 256(1) of the Income Tax Act, 1961, the advisory jurisdiction of this Court is confined only to matters where a question of law arises, and in view of our finding that in the facts of the present case no question of law arose, we do not think it proper to exercise the said jurisdiction merely on account of the fact that a reference has been made u/s 256(1) by the Tribunal at the instance of the Assessee. Speaking on behalf of the Division Bench in (1946) 14 ITR 66, Mahajan J., as he then was, said:

As I have already stated, if on facts stated no question of law arises or the question that arises is purely of an academic nature then this Court is not bound to answer the question referred.

In our opinion, the said view is correct and we only adopt it. We, therefore, refuse to answer the question referred to this Court on the ground indicated above. There will be no order as to costs of this reference.

G.K. Misra, C.J.

6. I agree.