
(1996) 07 MP CK 0059
In the Madhya Pradesh High Court
Case No : M.C.C. No. 65 of 1989

Oswal Trading Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 185, 185(1)

Citation : (2000) 158 CTR 316 : (1998) 233 ITR 385

Hon'ble Judges : S.K. Kulshrestha, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : G.M. Chaphekar and Goyal, for the Appellant; A.M. Mathur and Sharan, for the Respondent

Judgement

S.K. Kulshrestha, J.—In pursuance of the common orders dated August 12, 1988, of this court in M. C. C. Nos. 105 to 109 of 1986 Oswal Trading Co. Vs. Commissioner of Income Tax, , has referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, there was material before the Tribunal for coming to the conclusion that the assessee-firm was not a genuine firm and whether the finding of the Tribunal in that behalf was perverse ?"

2. A firm in the name of Ghasiram Kalooram was constituted by a deed of partnership, dated October 26, 1973, with partners, Smt. Chandbai, widow of Takhtamal, Shri Manaklal son of Takhtamal, Shri Rajendra Kumar son of Takhtamal and Shri Subhashchandra son of Takhtamal. Another firm was constituted by a deed of partnership, dated January 31, 1975, in the name of Oswal Trading Company with Shri Subhashchandra son of Takhtamal, Smt. Premkumari wife of Manaklal, and Smt. Kusum-kumari wife of Rajendra Kumar, as partners.

3. The firm, Ghasiram Kalooram was granted registration. The said firm was

carrying on Arhat business at Daulatganj, Ujjain. The Madhya Pradesh Krishi Upaj Mandi Adhiniyam provided for the establishment of market areas and the constitution of Mandi Committees for their management. In pursuance of the provisions of the said Act, a Mandi Committee was constituted at Ujjain. The Mandi Committee decided that "Pukka Adathia" would not be permitted to carry on business of "Kutcha Adathia" and separate licenses would be necessary for the latter. In pursuance of a resolution passed by the Kutcha Adathia Association, the assessee-firm Oswal Trading Company, was constituted. The assessee-firm filed an application for registration for the assessment year 1976-77. During the course of inquiry, a survey was conducted at the business premises of the firm on the basis whereof the Income Tax Officer held that the assessee-firm was not genuine and its business was actually carried on by the firm Ghasiram Kalooram. The Income Tax Officer, therefore, "rejected the application for registration by order u/s 185(1)(b) of the Income tax Act, 1961 dated March 28, 1979. The Income Tax Officer took into consideration that Subhashchandra was a common partner in both the firms and he had diverted practically his whole capital of Rs. 75,000 from the firm earlier constituted. The capital contribution of the lady partners was nominal and the assessee-firm was totally dependent on Ghasiram Kalooram for finance as well as for management, The Income Tax Officer also took note of the fact that the customers were mostly common and it was apparent from the accounts, that total transactions to the tune of Rs. 9,73,973 were routed through, diverted or financed by the other firm. According to the Income Tax Officer, the business of the two firms was being managed by the two male partners and the partners of Ghasiram Kalooram who were husbands of the female partners of the assessee-firm were shown as employees of the assessee-firm and salary was paid to them by the assessee. The female partners of the assessee had no management and control over the business of the assessee. On these facts, the Income Tax Officer reached a conclusion that there was unity of control and management, conduct of business by the same agency, inter-relation and inter-dependence of business, employment of mostly the same capital and the same staff to run the business. On these grounds, the registration was declined and the assessment was made in the status of association of persons. The same course was followed in the assessment years 1977-78 to 1980-81.

4. Both the assessee and Ghasiram Kalooram filed appeals before the Appellate Assistant Commissioner of Income Tax, Ujjain. The appeals were dismissed and further appeals before the Tribunal also failed. The assessee, therefore, filed applications for reference of the question of law arising from the order of the Tribunal but the applications were rejected. On applications having been filed in these cases before this court under the provisions of Section 256(2), this court directed the Tribunal to state the case and refer a question of law for the opinion of this court and, hence, the said question has been referred.

5. Learned counsel appearing for the assessee has argued with reference to the order of the Tribunal that the facts taken into account in coming to the conclusion that the two firms had a common source and a common identity were not

sufficient to lead to this inference. According to learned counsel, the two firms were independently constituted of entirely different sets of partners and were having independent business and there was no material before the Tribunal to come to the conclusion that there was unity of control and management and that the subsequently constituted firm was merely an alter ego of the earlier firm.

6. Learned counsel for the Revenue supported the order of the Tribunal and contended that on the facts found by the authorities, the conclusions were irresistible.

7. The Supreme Court in *Setabgunj Sugar Mills Ltd. Vs. The Commissioner of Income Tax, Central, Calcutta*, had laid down the test for determination if different ventures constitute the same business. Their Lordships have quoted with approval a passage from *Scales v. George Thompson and Co. Ltd.* [1927] 13 TC 83:

". . . the real question is, was there any inter-connection, any interlacing, any interdependence, any unity at all embracing those two businesses."

8. Their Lordships further observed (page 274) : "that what one had to see was whether the different ventures were so interlaced and so dovetailed into each other as to make them into the same business. These principles have to be applied to the facts, before a legal inference can be drawn that a particular business is composed of separate businesses, and is not the same one. No doubt, findings of fact are involved, because a variety of matters bearing on the unity of the business have to be investigated, such as unity of control and management, conduct of the business through the same agency, the inter-relation of the businesses, the employment of same capital, the maintenance of common books of account, employment of same staff to run the business, the nature of the different transactions, the possibility of one being closed without affecting the texture of the other and so forth".

9. From the tests as laid down above by the Supreme Court, it is clear that unity of control and management, conduct of business through the same agency, inter relation of the business, the employment of the same capital, the maintenance of common books of account, employment of the same staff and possibility of one business being closed without affecting the texture of the other are some of the relevant factors for ascertaining the true identity of the firm. It is clear from the findings reached by the Income Tax Officer and duly affirmed by the Appellate Assistant Commissioner and the Tribunal, that the Income Tax Officer found that there was unity of business, unity of control and management, conduct of business through the same agency, inter-relation and inter-dependence of business, employment of mostly the same capital and employment of the same staff to run the business between the two firms. Although there was nothing to suggest that the firm subsequently constituted could not have carried on this business if the earlier firm was dissolved and further there was nothing to indicate that common accounts were being maintained for both the firms, yet

there was sufficient material for the findings reached by the Income Tax Officer for declining registration under Section 185 of the Act and assessing the income of the firm on a protective basis in the status of association of persons. Whether or not a firm is genuine is essentially a finding of fact to be reached on proper material. After hearing both the sides, we conclude that there was material before the Tribunal to come to the conclusion that the assessee-firm was not genuine. The finding reached by the Tribunal does not seem to be perverse.

10. In the result, we answer the question about the material in the affirmative and the question about perversity in the negative as there was material and the finding is not vitiated by perversity.

11. The question is thus answered against the assessee and in favour of the Revenue.

12. This miscellaneous civil case stands decided in terms indicated above but with no order as to costs. Counsel fee for each side is, however, fixed at Rs. 750, if certified.

13. Before parting with the case we, however, deem it proper to grant liberty to the assessee to file appropriate application before the Tribunal to seek rectification or other relief, if permitted by law.

14. A copy of this order shall be transmitted to the Tribunal.