(1994) 04 RAJ CK 0058

In the Rajasthan High Court

Case No : Income Tax Reference No. 19 of 1984

Paras and Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:
Income Tax Act, 1961 — Section 185, 185(1)

Citation : (1995) 211 ITR 914

Hon'ble Judges : V.K. Singhal, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : R. Mehta, for the Appellant; D.S. Shisodia, for S. Bhandawat, for the Respondent

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following questions of law arising out of its order dated July 30, 1983, in respect of the assessment years 1972-73 and 1973-74 u/s 256(1) of the Income Tax Act, 1961 :

" 1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that during the accounting periods relevant to the assessment years 1972-73 and 1973-74, there was no genuine firm in existence entitled to registration u/s 185(1)(a) of the Income Tax Act, 1961, for the assessment year 1972-73 and to the benefit of continuance of registration for the assessment year 1973-74 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the firm Paras and Co., Pali, was the benamidar of Dalichand Tejraj, Pali ?"

2. The facts as stated by the Tribunal in the statement of the case are that the assessee-firm was constituted by a partnership deed executed on December 8, 1970, and consisted of four partners, namely, Parasmal, Smt. Leela Devi, Smt. Kamla Devi and Smt. Ugam Devi, who were the family members of Dalichand

Tejraj (Hindu undivided family). The statement of Parasmal was recorded on March 29, 1979, from which the Income Tax Officer, Pali, came to the conclusion that the firm is nothing but benami concern of Dalichand Tejraj, Pali. A number of notices were issued to the assessee-firm but they have neither appeared nor produced the partners in cross-examination and, therefore, the Income Tax Officer concluded that it is a branch of Dalichand Tejraj (Hindu undivided family) and registration was refused on March 24, 1975. An appeal was filed against this order which was allowed and the Income Tax Officer was directed to grant registration to the firm. In the appeal before the Income Tax Appellate Tribunal, the matter was restored to the Income Tax Officer for giving opportunity to the alleged partners for examination and to produce such other evidence as may be considered necessary for proving the genuineness of the firm. The statements of Smt. Ugam Kanwar, Smt. Leela Devi and Smt. Kamla Devi were recorded. The Income Tax Officer found that the firm deals in yarn which is purchased from Dalichand Tejraj and is sold through them and all the partners are the members of the Hindu undivided family of Dalichand Tejraj. The business premises were the same for both the concerns. No bill, cash-memo, etc., for purchase or sale is maintained and all the transactions are undertaken through Dalichand Tejraj to whom "adat" is alleged to have been paid by this concern. In the statement of Smt. Leela Devi, she has deposed that she does not know the profit-sharing ratio of the partnership and she has never seen the business premises of the partnership or as to who are the persons used to sit in the business premises. The yarn purchased is kept in the godown but to whom the godown belongs was not known to Smt. Leela Devi. In the statement of Smt. Kamla Devi, she was also not aware with regard to the amount of rent paid to Dalichand Tejraj and it was not in her knowledge as to who is maintaining the accounts of the firm or where the goods of the firm are kept and sold. In the statement of Smt. Ugam Kanwar it was found that she does not know the name of the market where the shop is situated and she never visited the business premises. She had no knowledge as to what was the capital investment of the other three partners and was not aware even with regard to the nature of the business of partnership. The affidavits which were submitted before the Income Tax Officer were said to be not in her knowledge as to what has been stated therein. The Income Tax Officer, therefore, vide his order dated June 16, 1979, came to the conclusion that the firm is not genuinely constituted but is a branch of Dalichand Tejraj (Hindu undivided family). The registration was accordingly refused.

3. In the appeal preferred before the Commissioner of Income Tax (Appeals), it was found that no doubt the alleged partners exhibited their lack of knowledge of the business and other aspects of the partnership and partners, such as capital contribution by the other partners, their shares of profit, etc., but there was a male member Shri Parasmal who was managing the affairs of the firm. The investment made by the alleged partners was accepted by the Department and they have been separately assessed in respect of their capital investments. It was observed that the ladies were not actively participating in the day-to-day

conduct of the business, but they were sleeping partners and the male partner was conducting the business. The absence of vouchers were not found to be relevant and the appeal was accordingly allowed.

4. The Department preferred a second appeal before the Income Tax Appellate Tribunal where it was observed that the partners were closely related and they were members of the Hindu undivided family of Dalichand Tejraj and the office premises of both the firms were the same. In the statement of Parasmal, it was found that he was also not remembering as to in which year the firm was constituted and stated that it is only the difference of the prices which is received as profit from Dalichand Tejraj (Dalichand Padamji is the trade name). The delivery of the goods was not taken except when the stock was accumulated and that to Dalichand Padamji no rent was paid for the premises. The bills, memos or any other documents with regard to the transaction with Dalichand Padamji were maintained and only "Dalali" was paid. The salary was paid to Sampatraj who was related to Parasmal. He was a student of XIth class, no work was found to have been done by him. The statements of the alleged partners were taken into consideration and it was found that they were ignorant regarding the basic details of the partnership firm, e.g., the capital contribution or to be contributed by all the partners, their profit-sharing ratios, the nature of the business, place of business, the partner who is managing the affairs of the firm, etc. Some of the partners were not even aware of the partnership deed or even the affidavits. Smt. Kamla has brought a capital of Rs. 4,000 and was paid Rs. 25,000 as profit which was deposited in the joint account. The capital was found to have come from Dalichand Padamji. The fact that the employees engaged in the so-called firm were not rendering any service was also taken into consideration and it was found that introduction of Dalichand Padamchand is to give colour of genuineness of the firm Parasmal and Company. This was found to be not a genuine arrangement when Parasmal and Company has not brought any other evidence to show that purchase and sale were made by them. Even the evidence that sale and purchase were effected under the directions of Parasmal and Company was also not on record and, therefore, it was considered to be a "benami" concern having the paper formalities completed. The fact that the firm is registered with the Registrar of Firms or having the bank account was held not to alter the correct factual position that it is only a paper firm. The fact that the firm was operating from the business premises of Dalichand Padamchand and that the members are closely related and the profits remain in the books of the firm as the same was not withdrawn by any of the partners was also noticed and it was held that it is in fact a benami concern of Dalichand Tejraj and is not entitled for registration.

5. The arguments of both learned counsel have been heard. The question as to whether the partnership is genuine and actually exists is a question of fact. It is the totality of the circumstances which has to be seen. Under the provisions of Section 185(1), registration is to be granted if the genuine firm was in existence with the constitution so specified in the deed of partnership. Under the

Explanation to said section, it was provided that a firm shall not be regarded as a genuine firm if any partner of the firm in relation to the whole or any part of his share in the income or property of the firm at any time during the previous year, a benamidar of any other partner to whom the first mentioned partner does not stand in the relationship of a spouse or minor child. This court in the case of Ranu Bros. Vs. Commissioner of Income Tax, has taken into consideration the observations of the Tribunal that the assessee-firm did not obtain any separate shop or premises for carrying out the business and the entire labour personnel remained the same. The other factors were also taken into consideration and it was observed that it may to some extent be correct as contended by learned counsel for the petitioner that each one of the circumstances taken into account separately may not be sufficient to hold that the partnership was not a genuine one, but when all the facts and circumstances existing at the inception of the partnership and the facts immediately leading thereafter are taken into account, there remains no manner of doubt that the Tribunal has arrived at the correct conclusion. In these circumstances, it was held that no question of law arises.

6. The apex court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. K. Kelukutty, has held that the intention of the partners will have to be decided with reference to the terms of the agreement and all surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance and other incidents of the respective business. The partners may decide to carry on another business and share the profits therein. But in order to consider that they are separate and distinct businesses, the surrounding circumstances, namely, interlacing or interlocking of management, finance and other incidents of the respective business have to be seen. The finding which has been recorded shows that there was nothing separate and business was carried on in the same premises. The partnership firm was not maintaining the books of account, vouchers. The staff was common and even on enquiry it was found that no work was done by them. Both the concerns were dealing in yarn. Ignorance of the partners with regard to shares, profit, capital, place of business, etc., are the factors on the basis of which the Tribunal has given a finding that no genuine firm is in existence and it is only a branch of Dalichand Tejraj (Hindu undivided family) and that finding is in accordance with law which does not call for any interference by this court. In these circumstances, it is held that the Income Tax Appellate Tribunal was justified in holding that during the accounting period of the assessment years 1972-73 and 1973-74, there was no genuine firm in existence entitled to registration u/s 185(1)(a) of the Income Tax Act. We are of the view that the Appellate Tribunal was justified in holding that the firm Parasmal and Company was the benami of Dalichand Tejraj.

7. The reference is accordingly answered in favour of the Revenue and against the assessee. No order as to costs.

