

(1982) 01 AHC CK 0032

In the Allahabad High Court

Case No : Income-tax Reference No. 478 of 1974

Ram Das Ashok Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-01-1982

Acts Referred:

Income Tax Act, 1961 — Section 184(7)

Citation : (1982) 27 CTR 325 : (1982) 135 ITR 15 : (1982) 10 TAXMAN 96

Hon'ble Judges : Satish Chandra, C.J.;A.N. Varma, J

Bench : Division Bench

Advocate : R.K. Gulai, for the Appellant; M. Katju, for the Respondent

Judgement

Satish Chandra, C.J.—This reference is for the assessment year 1969-70. For this year, the regular assessment was completed on the assessee-partnership firm, in the status of a registered firm by an assessment order dated October 21, 1968. The Additional Commissioner of Income Tax came to know that a minor had been given the benefit of partnership in the assessee-firm, and that the minor attained majority on January 14, 1968. This date fell within the assessment year 1969-70, because the accounting period for this year ended on October 21, 1968. Even though the minor had become a major, no fresh deed of partnership had been drawn up by the parties till the end of the assessment year 1969-70. He was of the opinion that, in these circumstances, the firm should not have been granted renewal of registration. He commenced proceedings u/s 263 of the I.T. Act, 1961, and after hearing the assessee cancelled the assessment order and directed the ITO to pass a fresh assessment order on the firm treating it to be an unregistered firm.

2. Aggrieved against that order, the assessee went up in appeal to the Tribunal but failed. At the instance of the assessee, the Tribunal has referred the following questions of law for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Additional

Commissioner of Income Tax by holding that the Income Tax Officer's order granting renewal of registration u/s 184(7) was erroneous and by cancelling the order of assessment as prejudicial to the revenue, cancelled the order of renewal of registration as well and whether such an order was valid in law ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessments of the partners having been completed, the firm could thereafter be assessed in the status of an unregistered firm and the provisions in that regard in the Act of 1922 or 1961 were materially different ?

3. Whether, on the facts and in the circumstances of the case, when a minor who is admitted to the benefits of a partnership attains majority, a change in the constitution of the firm occurs and until a separate deed of partnership is executed and fresh registration is sought for, the firm is not entitled to registration ?"

3. In respect of the first question, we are clearly of the opinion that the Addl. Commissioner not only purported to cancel the assessment order but also the order granting renewal of registration after finding that the minor had attained majority and that no fresh deed of partnership had been executed by the partners although a change had occurred in the constitution of the firm. The Commissioner observed :

"Proper course for the assessee-firm was to file an application for registration accompanied by an instrument of partnership evidencing it. It was not correct for the assessee-firm to file a declaration u/s 184(7). The Income Tax Officer was wrong in granting renewal of registration. The assessment order of the Income Tax Officer for the assessment year 1969-70 treating the firm as a registered firm is thus erroneous and is also prejudicial to the revenue. This order is, therefore, cancelled with a direction to the Income Tax Officer to make a fresh assessment taking the status of the assessee as an unregistered firm."

4. We have no hesitation in holding that the Addl. Commissioner cancel led the order of renewal of registration as well. In this view of the matter, question No. 1 is answered in the affirmative and in favour of the revenue.

5. We then take up question No. 3. Admittedly, the minor had attained majority on January 14, 1969, and a fresh deed of partnership was drawn up on December 2, 1971, i.e., long after the expiry of the previous year relating to the assessment year 1969-70; which ended on October 21, 1968. The Tribunal took the view that since no fresh deed of partnership had been drawn up till the end of the year in question the registration could not be renewed. This view has not been upheld by a Full Bench of this court in the case of *Badri Narain Kashi Prasad v. Addl. CIT* [1979] 115 ITR 858. The Full Bench held that there can be no change in the constitution of the firm by the mere fact of a minor admitted to the benefits of partnership becoming a major and electing to remain a partner. He was already a partner and he continues as a partner. The second part of the

enquiry is whether there has been a change in the shares of the partners as evidenced by the instrument of partnership. A minor is not liable to share the losses of a firm though he is entitled to a share in the profits. The share of the loss relating to the share of the minor has hence to be provided for. The re-distribution of the shares in losses on the minor attaining majority has also to be ascertained. If, on a reasonable construction of the instrument of partnership, these matters cannot be ascertained, it will be a case where the instrument of partnership does not evidence the change in the shares. In case the original instrument of partnership envisages this change, the firm will be entitled to a continuance of the registration u/s 184(7) of the Act.

6. It is, therefore, necessary to see the original instrument of partnership with a view to find out whether it makes an adequate provision for the share in loss as mentioned above. It is not necessary that in case the relevant information is available in the original instrument of partnership, none the less a fresh instrument of partnership must be drawn up.

7. The matter hence cannot be decided merely on the footing that a fresh deed of partnership was not executed. The original deed of partnership has to be looked into and if it fails to provide the requisite information, then alone the cancellation of registration can be held to be valid on the footing that a fresh deed of partnership had not been executed.. Question No. 3 cannot finally be decided on the material before us as the deed of partnership is not before us. The matter will have to be looked into by the Tribunal from this point of view.

8. In respect of question No. 2, learned counsel for the assessee invited our attention to several decisions of different High Courts, namely, in the case of *Laxmichand Hirjibhai v. CIT* [1981] 128 ITR 747, *COMMISSIONER OF Income Tax, MADRAS-II Vs. BLUE MOUNTAIN ENGINEERING CORPORATION.*, and *Universal Commercial Company Vs. Commissioner of Income Tax*, . These are decisions under the I.T. Act, 1961. They were not placed before the Tribunal,

9. Since the matter is going back before the Tribunal, it will be open for the parties or the Tribunal to look into these cases and decide the question afresh. Learned counsel for the assessee wanted to raise certain points not covered by the questions referred to us. The Tribunal may, if it thinks fit, permit them.

10. We, therefore, return the reference unanswered and we direct the Tribunal to re-hear the appeal in accordance with the observations made above. In the circumstances of the case, the parties will bear their own costs.