

(1974) 02 PAT CK 0019
In the Patna High Court
Case No : Tax Case No. 40 of 1970

Sri Ram Mills

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-02-1974

Acts Referred:

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

Citation : (1974) 95 ITR 279 : (1974) 7 PLJR 282

Hon'ble Judges : Untwalia, C.J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : K.N. Jain and G.C. Bharuka, for the Appellant; Shambhu Sharan, for the Respondent

Judgement

Untwalia, C.J.—This is a reference by the Income Tax Appellate Tribunal, Patna Bench, u/s 256(1) of the Income Tax Act 1961. The assessee is a partnership firm consisting of five partners. They carry on business in chanti and dal milling at Patwah in the district of Patna. It filed an application u/s 26A of the Indian Income Tax Act, 1922, for registration of the firm for the assessment year 1961-62. The Income Tax Officer refused registration on the following two grounds :

" (i) the stamp for the partnership deed was purchased on November 11, 1959, whereas the recital in the deed of partnership showed that it was written on October 31, 1959 ; and

(ii) the statements of two of the partners, Sri Prayag Lal and Sri Ganesh Lal (copies of which are annexed hereto as annexures " A-1 " and " A-2 " and form part of the statement of case), indicated that they were not the real partners but were merely the dummies of the other three partners. "

2. A copy of the partnership deed in question is annexure " B " to the statement of the case. A copy of the order of the Income Tax Officer dated March 30, 1965,

is annexure "E" to the statement of the case. The assessee went up in appeal before the Appellate Assistant Commissioner from this order. The Appellate Assistant Commissioner by his order dated January 27, 1967 (annexure " F "), allowed the appeal and upset both the findings recorded by the Income Tax Officer.

3. The assessee had filed a similar application for registration in the assessment year 1962-63. This application was refused by the Income Tax Officer by his order dated January 17, 1967, for the reasons mentioned in his order in respect of the year 1961-62. The assessee went up in appeal from this order also. The Appellate Assistant Commissioner allowed the appeal for the reasons mentioned by him in his appellate order relating to the assessment year 1961-62. The department took up the matter further before the Appellate Tribunal by filing two appeals in respect of the two assessment years. The Tribunal allowed both the appeals and seems to have held that the deed of partnership which purported to have been executed on October 31, 1959, could not be accepted as a valid instrument when the stamps were purchased on November 17, 1959. The assessee asked for a reference to be made in relation to the assessment year 1962-63 only. The Tribunal has referred the following question of law to this court in this case :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in re-fusing registration to the firm ?"

4. In my opinion, the question of law referred to this court is not properly framed. To bring out the real issues between the parties, it has to be reframed. In my opinion, the question of law which does arise from the Tribunal's order in appeal is the following :

" Whether the Tribunal was right in law in holding that the deed of partnership in question was an invalid instrument and, therefore, registration was rightly refused ?"

5. A few more facts may be stated for determination of the reframed question. The accounting year in relation to the assessment year 1961-62 commenced on October 3], 1959, and ended on October 18, 1960. The accounting year, being the Dewali year in relation to the assessment year 1962-63, commenced on October 19, 1960, and ended on November 6, 1961. There is no dispute, rather the findings recorded by the Tribunal are to that effect, that stamps for execution of the deed in question were purchased on November 17, 1959. The deed was actually signed by the partners, in other words, it was actually executed by the partners on March 18, 1960, before the registering officer. What happened, however, to create the difficulty in the way of the assessee is that at the top of the deed (annexure " B ") it was mentioned--" This deed of partnership made this 31st day of October, 1959"

6. Paragraph 1 of the deed also recited:

" The partnership starts from to-day, the 31st October, 1959, and shall be carried on thereafter until determined by the partners."

7. It is, therefore, obvious that there was a contradiction between the recital of the date of execution in the deed and its actual execution. The question for consideration was whether the deed could be held to be invalid only on that account, as has been held to be so by the Tribunal. It has missed a fundamental principle of interpretation of a document that the document has to be read as a whole, and if there is any conflict between one part of the document and the other, then effect has to be given to that part of the document which finds support from other facts and circumstances of the case. Hence, it is plain that the recital about the date of execution of the document on the 31st day of October, 1959, was incorrect. Stamps were purchased much later, and on those stamps the deed could not be executed on October 31, 1959. The actual execution of the deed came in when the partners signed the document on May 5, 1960. That being so, to all intents and purposes, the document was executed on March 18, 1960, and one could take the view that the partnership did not come into existence on October 31, 1959, on the basis of the obviously wrong recitals in the earlier portion of the deed. But, surely, it did come into existence when the document was executed on March 18, 1960. The Tribunal, in the eye of law, was not right and justified in holding the deed of partnership to be invalid only because of the mistake of recital of the date of execution in it. If can hazard a surmise for the cause of this mistake, although it is not necessary to do so, it seems to me that the partners purported to execute a partnership agreement on October 31, 1959, and after the stamps were purchased, the recital, which might have been there in a plain paper, was copied out in the deed in question, without making the correction in the recitals. Be that as it may, on the plain facts of this case, it goes without saying that the deed was executed on March 18, 1960, stamps had been purchased before its actual execution, and the mere recital of the deed of partnership having been made on the 31st day of October, 1959, could not detract from its value of being a valid partnership document.

8. Learned standing counsel for the revenue submitted that the finding of the Tribunal in substance and in effect seems to be that the partnership was not genuine. He asked us to call for a further statement of the case, if the finding of the Tribunal in that regard was not clear and certain. We refused this prayer for the simple reason that the Tribunal has not recorded any such finding. It is to be emphasised here again that the Appellate Assistant Commissioner had held the partnership to be genuine, upsetting the finding of the Income Tax Officer, and in the Tribunal's order there is no inkling as to there being any illegality, impropriety or incorrectness in that finding of the Appellate Assistant Commissioner. Rather, as I read the order of the Tribunal, even in the light of the separate note which the learned Judicial Member has added to the judgment of the learned Accountant Member, it has not at all differed from the view of the Appellate Assistant Commissioner that the partnership is genuine. As stated above, the Income Tax Officer had held the deed to be defective and invalid

because of the difference in the recital of the date of execution, the date of purchase of stamps and its actual execution. The Appellate Assistant Commissioner had not found the view of the Income Tax Officer even in that regard to be correct. The Tribunal found it to be correct. In my opinion, therefore, the only question of law which falls for determination by us is whether the Tribunal was right in law in holding that the deed of partnership in question was invalid. If it was not right, then it is manifest that refusal of registration in this case was wrong.

9. The Tribunal, in support of its view, has placed reliance upon a Bench decision of the Kerala High Court in *Malankara Timbers v. Commissioner of Income Tax* ILR [1967] 66 (Ker.).200. It would be seen from the facts of that case that according to the recital as to the date of execution of the partnership deed, the date was March 1, 1959. Stamps had been purchased on March 23, 1959. Application for registration had been made on April 29, 1959. It was not actually known when the deed of partnership was signed and executed by the partners. In such a situation the Kerala High Court thought that it was signed some time between March 23 and April 29, 1959. The accounting year in question had commenced on April 1, 1959. That being so, the deed could not be taken to have covered the entire accounting year 1959-60. Refusal of registration was held to be justified on that ground. If the ratio of this case is taken to be correct, then it could have affected the assessee in regard to the question of registration for the assessment year 1961-62, but not for the year 1962-63.

10. Mr. K.N. Jain, learned counsel for the assessee, placed reliance upon a recent decision of a Bench of the Madras High Court in *Imperial Automobiles Vs. Commissioner of Income Tax*, .. Facts were very much similar, and the Madras High Court took the view that the registration could not be refused merely because of the difference in the date of execution as recited and the date of actual execution. The learned judges constituting the Bench, however, thought that this could lead to a suspicion about the genuineness of the partnership, and since the Tribunal had not recorded any finding in that regard a further statement of the case was called for. The difference between the facts of the case before the Madras High Court and the instant one, to my mind, is so obvious that taking recourse to the calling for a further statement of the case by us was neither necessary nor would have been justified. In the Madras case the Income Tax Officer had found the partnership not to be genuine. The Appellate Assistant Commissioner had upheld his view in that regard too. The Tribunal did not go into this question at all. Even if its decision, therefore, on the first question of the alleged invalidity of the deed of partnership was erroneous, it was necessary to know the view of the Tribunal as to the genuineness of the partnership, because the departmental authorities had concurrently expressed the view against the assessee in that regard. In the instant case, as I have said above, the finding as to the genuineness of the partnership is in favour of the assessee. The Tribunal neither expressly nor by any implication in its appellate order has thrown any doubt or suspicion in regard to that finding. That being so, it must be taken to be

a finding of fact in favour of the assessee that the partnership is a genuine one.

11. For the reasons stated above, I answer the reframed question in the negative--in favour of the assessee and against the revenue. I hold that the Tribunal was not right in law in holding that the deed of partnership in question was invalid and was, therefore, not right in refusing registration of the partnership firm for the assessment year 1962-63. The assessee must have the costs of this reference. The hearing fee is assessed at Rs. 100 only.

Nagendra Prasad Singh, J.

12. I agree.