

(1957) 03 AP CK 0001

In the Andhra Pradesh High Court

Case No : R.C. No"s. 45 and 46 of 1955

Sugar Syndicate

APPELLANT

Vs

Commissioner Income Tax

RESPONDENT

Date of Decision : 05-03-1957

Acts Referred:

Companies Act, 1956 — Section 4
Contract Act, 1872 — Section 239
Income Tax Act, 1961 — Section 26, 26A
Income Tax Rules, 1962 — Rule 2

Citation : (1957) 03 AP CK 0001

Hon'ble Judges : Subba Rao, C.J; Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : B.C. Jain, Lakshmikant Rao and Murlidhara Rao, for the Appellant; N. Narasimha Iyengar, for the Respondent

Judgement

Mohd. Ahmed Ansari, J.—The Assessee is a firm called "Sugar Syndicate" and has been formed on October 12, 1949. under a deed styled as "Articles of Partnership. The document recites that Bankatlal Gopikishen Badruka and some others have been successful in securing the distribution of sugar in the cities of Hyderabad and Secunderabad from the Government, and the parties hereunto have agreed to form a partnership to carry out the said - scheme and any other allied business, which the partners may decide. The deed, among other things provides that the partnership is not for any fixed period, is to continue" at least till the distribution of sugar work continues and is not dissoluble on the death of any partner. Seventeen persons have signed it and their signatures are serially numbered with/ addresses against each name. According to the aforesaid list, the third partner is Bhagavandas Kaluram, the fifth is Rampal Sitaram, the eight is Haji Razack Haji Vali Mohd. and the thirteenth is Ramkishan Ramlal Darak. In proceedings whose details will be presently given, Bhagavandas Kaluram has been found to be four anna partner in the firm styled Baiaji Sshivnarayan that consists of five persons, Rampal Sitaram to be one of the three equal partners in

the firm of Rampal Mohanlal, Haji Razack Haji Vali Mohd. to be one of the two partners in the firm of the same name, and Ramkishan Ramlal Darak to be a seven-anna partner in Ramsukh Chaitandas that comprises three persons. The points for "decisions in the two references are whether the other members of the aforesaid firms are also partners in the Sugar Syndicate.

2. It appears that the Sugar Syndicate had submitted returns in respect of assessment years 1951-52 and 1952-53. The Assessee firm had also applied u/s 26A of the Indian Income Tax Act for registration for the year 1951-52 and for renewal of the registration for the year 1952-53. The Income Tax Officer, Hyderabad, rejected the application on the ground that the partnership consists of 26 persons, it has exceeded the maximum limit of twenty partners u/s 4 of the Companies Act, and therefore, it cannot be valid in the eye of law. He accordingly determined the status of the Assessee firm for purposes of Income Tax to be that of association of persons. Two appeals were preferred before the Appellate Assistant Commissioner on the ground that the four members of the other firms were partners in the Assessee firm in their individual capacity; but these appeals were dismissed by an order of September 22, 1953. The basis of the dismissal is that more than twenty persons: had participated in the division of profits, whereas the deed had stated seventeen persons to be partners; that four of the partners of the Assessee firm were representing other firms with the result that the deed did not represent the true state of facts; and that the capital contributed by the aforesaid four partners was from the funds of the partnership in which they were partners. Two appeals were preferred to the Appellate Tribunal, Bombay and they also were dismissed. The tribunal had also held that the four partners represented their respective firms and were obviously not partners of the Assessee firm in their individual capacity, as the funds required by the partners were provided by their firms; and the accounts of the partners in the Assessee's book were reflected in the accounts of the Assessee firm in the books of the other firms. The tribunal particularly relied on (1955) 27 ITR 88 wherein it has been held that a firm as such is not entitled to enter into a partnership with another firm or individual and if it enters into any such partnership the partners of the smaller firm would individually become partners of the bigger firm so that each of them must personally sign the application for registration. The Assessee firm filed an application for stating a case to the High Court, which was rejected on the ground that the question whether the person who represents the firm represents himself individually or his firm is a question of fact. Then a petition was filed in the High Court, which was allowed and accordingly the following questions have been referred:

1. Whether the Tribunal had any evidence to come to the conclusion that the four of the partners had entered into the agreement of partnership in a representative capacity, and if so, whether such evidence is relevant and admissible under the Income Tax Act.

(2) Whether in the circumstances of the case the Tribunal was right in construing

that the firm consisted of more than twenty persons and required to be incorporated u/s 4 of the Indian Companies Act.

(3) Whether in the fact and circumstances of the case the Tribunal was justified in refusing the registration of the firm and its renewal u/s 26A of the Income Tax Act.

3. In the beginning of our answers to the aforesaid questions we would emphasise that strangers do not become partners by having a common partner. The Civilians have described the same proposition by stating "*socius mei socius meus non est*: a partner of my partner is not my partner." The position is not different even where the profits of such partners in the partnership are divided between him and strangers as partners. For example, where several persons are partners and one of them agrees to share the profits derived by him with a stranger, the agreement does not make the stranger a partner in the original firm; but results in what is called a sub-partnership. It makes the parties to the agreement partners inter se, but it in no way affects the other members of the principal firm. Lord Eldon in *Ex parte P. Barrow* 2 Rose 252 (B) states the law on the subject thus:

I take it to have been long since established, that a man may become a partner with A where A and B are partners and yet not be a member of that partnership which existed between A and B. In the case of Sir Chas Raymond, a banker in the city, a Mr. Fletcher agreed with Sir Chas Raymond that he should be interested so far as to receive a share of his profits of the business, and which share he had a right to draw out from the firm of Raymond & Co. But it was held that he was no partner in that partnership; had no demand against it; had no account in it; and that he must be satisfied with a share of the profits arising and given to Sir Chas Raymond.

We have in this country authorities that, where a partnership has been formed between, a stranger and a manager of a joint family, the other members of the family do not ipso facto become partners. *Kumavaswaini Sastriar, J., in Grandhe Gangayya Vs. Grandhe Venkataramiah and Others*, has observed at page 456 (of ILR): (at p. 38 of AIR).

It is well settled that a .contract of partnership between a member of a joint family and a stranger does not make every member of the joint family which the managing member represents a partner so as to clothe him with all .the rights and obligations of a partner as defined in Section 239 of the Contract Act..... It is no doubt true that as between the members of the undivided family and the co-partner who enters into a contract of partnership for the benefit of the family they will be entitled to call upon him to account for the profits earned by him from the partnership and to share in such profits but this will not place them in any position of direct contractual relationship with the other partners of the firm. Nor would the fact that the entire assets of the joint family might be available to the creditors of the firm make any difference. The position of the Plaintiff in the

present case cannot be higher than that of a sub-partner.

4. We have also the case of AIR 1934 192 (Privy Council) , that in such a case the family as a unit does not become a partner but only such of its members as in fact entered into a contractual relation with the stranger.

5. Coming to the provisions relating to registration of firms under the Indian Income Tax Act, the advocate of the Assessee firm had relied on COMMISSIONER OF Income Tax, PUNJAB Vs. LAXMI TRADING COMPANY,. It was held therein that there could in law be a partnership between a partner in a head-firm and another individual in respect of the partner's share in the head-firm so as to entitle the partners in the sub-firm to apply for registration thereof u/s 26A of the Indian Income Tax Act. The learned Judges referred to a passage in Lindley on Partnership, wherein it is said that if several persons are partners and one of them agrees to share the profits derived by him with the stranger this agreement does not make a stranger a partner in the original; firm, and that the result of such an agreement is to constitute a sub-partnership which makes tire parties to it partners inter se, but does not affect the other members of the partnership.

Again in Commr. of Income Tax Vs. Agardih Colliery Co., , another authority relied on by the advocate of the Assessee firm, it was laid down" that there could be no partnership in the eye of law unless there be privity of contract between the parties. The facts of the case were that a firm was constituted under a deed of partnership, wherein there were two partners A and B, each having eight annas share and that one of the partners, B, entered into another deed of partnership with five other persons, whereby his eight annas share of the profit in the former was to be divided between them with retrospective effect from the date of the original partnership; that the other partner of the main partnership was a party to the second; and that the partners of the original firm applied for the registration of the first partnership deed; but the I. T. o. rejected their application on the ground of the names of all the seven not having been mentioned in the application and the deed toot correctly representing the partners or their shares.

The Appellate Assistant Commissioner and the Appellate Tribunal had held in the case that the second partnership did not affect the first, and that, therefore, the firm ought to be registered u/s 26 of the Income Tax Act. On a reference the Patna High Court held! that as A was not a party to the second partnership there was no privity of contract between: the seven persons, and, therefore, the first partnership was not affected, in any manner by the constitution of the second partnership that the five persons who entered into the second partnership with B could not be held to be partners of the first partnership and that, therefore, the firm of A and B constituted by the original deed; was registrable u/s 26A of the Income Tax Act.

6. No useful purpose will be served in citing further authorities; for the proposition is well established that unless privities of contract be established

between persons constituting a partnership and those who are partners of a partner in the partnership, they do not become partners. It is equally clear that sharing profits or advancing money to a partner for purposes of his paying part of the capital would not render such partners members of the main firm. The case of 1955- (1955) 27 ITR 88 referred to by the Tribunal in no way conflicts with the aforesaid proposition.

There Jabalpur Ice Manufacturing Association claimed to be a firm, whose partners were Bharat Ice and Aerated Waters Ltd., and Nerbudda Ice Factory; the deed of partnership was signed by the managing director of the Aerated Waters Ltd., and by Purushottam Lal on behalf of Messrs. Saligram and Co., which was also a firm consisting of two persons and owning the Nerbudda Ice Factory. These two firms had expressly entered into a partnership and it) was held, in these circumstances, that if firms enter into, a partnership the partners of the contracting firms would individually become partners in the partnership.

The case is authority for the proposition that firms have no juristic personality: but it does not decide that sub-partners in absence of contract became partners in the main partnership. The remaining part of the decision that unless partners' individual shares are defined each of them personally signs the application for registration the requirement of law would not be fulfilled, is the consequence of the absence of juristic personality in the contracting parties. We also think the recent pronouncement of the Supreme Court in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , does not lay down the proposition that in absence of any agreement between the parties concerned, members of sub-partnership become partners of the main; firm.

On the contrary, this case decides that no question can arise of the registration u/s 26-A of the Indian Income Tax Act of a partnership purporting to be between three firms, a Hindu undivided family business and an individual; for a firm is not a person and as such is not entitled to enter into a partnership with another firm or Hindu undivided family or individual. Obviously, if the firm is not a juristic person, it cannot have the rights and liabilities of its own, and, therefore, cannot enter into a partnership with other natural or juristic person.

The deed of partnership in the case was signed by five persons, i.e., by the individual partner, by the "karta" of joint family and by a partner in each of the three firms, it was sought to be registered u/s 26A of the Indian Income Tax Act and the application was signed by the same five individuals. In these circumstances, their Lordships held that even assuming a valid partnership, as all the members of the three firms had not personally signed the application it was not in a proper form under Rule 2 of the Income Tax Rules. In both these cases there being clear agreements to form partnerships, what would be the position if there be no such agreement was never determined? Therefore, the proposition that sub-partners in absence of contract do not become members of the main partnership is firmly established.

7. The correctness of the aforesaid proposition was not seriously challenged before us. But the learned advocate of the Department contended that the question whether the partners, of the four partnerships were partners of the Sugar Syndicate, is a question of fact and the finding cannot be disturbed by this Court. He argued that registration of a firm under the Income Tax Act is not a general or common law right, but is a privilege and if a firm desires to have this privilege it must conform strictly and rigidly to the requirements provided by the law.

He urged that the authorities must be satisfied about the genuineness of the firm with actual shares of each partner, and when this is not done the officer is competent to refuse registration. Reliance was placed in this connection on *Raju Chettiar and Bros. v. Commr. of Income Tax Madras*, ILR (1949) Mad 644 : AIR 1949 Mad 51G (H). Reference was made by the learned advocates to *R.S. Balasubramania Mudaliar Vs. Commr. of Income Tax Excess Profits Tax, Madras*, wherein it was held that if the Assessee could establish about there being no material at all on record for the taxing authorities or for the Appellate Tribunal to come to the conclusion, the Assessee could claim that the findings of fact should not prevail.

It was urged before us that the possibility for another Judicial tribunal in coming to a different conclusion, is no justification for holding that there is no material for the finding.. Reliance was further placed on *Commissioner of Income Tax, Bombay City I Vs. Ramnarain Sons Ltd.*, wherein the Bombay High Court has held that a finding of fact arrived at by the tribunal could be set aside by the High Court in a reference only if it is entirely unreasonable, that is, if it is such that no person acting judicially or properly instructed as to the relevant law could have come to that finding.

Finally, the learned advocate strongly relied on *Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras*, where their Lordships of the Supreme Court after review of a large number of authorities, have laid down that findings on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they as a reasonable man, could come to the conclusion to which they have come, and this is so even though the High Court would on the evidence have come to the conclusion entirely different from that of the Tribunal.

8. Having regard to the aforesaid authorities, the first question is the crucial question, in these references. The factual data on which the four partners have been found to be in the firm in their representative capacity is neatly summarised in the statement of the case to us. As regards Bhagvandas Kaluram, the share of his profit in the Sugar Syndicate has been treated by the firm of Balaji Shivnarayan of which he is a partner, as its own profits. Similarly the share of profit of Rampal Sitaram in the Assessee firm has been treated as its own profit by the firm of Rampal Mohanlal.

Another piece of evidence so far as this partner is concerned is that Rampal has a credit balance of Rs. 45,000. in his account in the Assessee's firm books, and the book of Rampal Mohanlal, shown the amount of Rs. 45,000 to the debit of the Sugar Syndicate's accounts. Coming to Haji Razack Haji Vali Mohd", his share of profits was found to have been reedited by the firm of which he is a member into its own profits and loss accounts. Also the share of profits of Ramkishan from the Assessee firm has been credited in the books of Ramsukh Chaitandas to the profits and loss accounts of the firm.

Therefore, the evidence, excepting" Rampal's credit of Rs. 45,000 which is entered in his firm's account books to the debit of the Sugar Syndicate for treating the four partners as members of the Assessee firm in their representative rapacity, is sharing of the profits of these partners with their partners in the respective firms. Obviously this is no evidence of the intention by the other partners of the Assessee firm to accept the partners of the aforesaid four partners to be their partners. Nor the sharing" of profits is evidence of the intention of the several members of the four firms to accept each other as partners in the Assessee firm.

If anything, the evidence, of profits accruing to partners being shared with their partners, constitutes the several firms as separate sub-partners, and we have already seen that such persons are not partners. Because there is no evidence showing privity of contract between the partners of these four partners and other partners of the Sugar Syndicate, the finding of the Tribunal is not binding. Nor do we think that the credit of Rs. 45,000 to the debit of Sugar Syndicate in the account books of Rampal Mohanlal can sustain the factual conclusions of the Tribunal or of the Income Tax authorities.

The finding is that there are twenty six partners of the Assessee firm; but to constitute them partners there must be privity of contract between all the persons. Each must be held to have expressly or impliedly agreed with others to enter into the partnership. Now the debit in the account book of Rampal Mohanlal cannot be evidence of this intention, for example, by the members of Haji Razack Haji Vali Mohd. "to enter into partnership with the members of "the firm of Balaji Shivnarayan for purposes of distributing sugar. At any rate, the entry is no evidence that the other members of the Syndicate had accepted the offer of or had ever offered the other members of the firms of which "their four partners are members, to become their own partners.

9. Therefore, the answer to question No. 1 is that the Tribunal had no relevant and admissible evidence to support its conclusion that the four partners had entered into an agreement of partnership in a representative capacity.

10. Sub-partners being distinct from partners, it follows that the existence of sub partners would not affect the number of members: but a firm for purposes of Section 4 of the Companies Act. We need not think any authority is needed. But there is the case of *In Re: Peninsular Life Assurance Company Ltd.*, wherein

that proposition has been laid. Therefore, our answer to question No. 2 is that the Tribunal was not right in construing the Assessee's firm to be: constituted of more than twenty persons and required to be incorporated under section.

11. Lastly, our answer to question No. 3 is that the refusal to register is not justified.

12. These answers which cover both the references be .sent to the Tribunal and the Assessee will be entitled to costs of both, which we fix at Rs. 250.