
(1978) 05 AHC CK 0085

In the Allahabad High Court

Case No : Income-tax Reference No. 310 of 1974

The Addl. Commissioner of Income Tax

APPELLANT

Vs

Uttam Kumar Pramod Kumar

RESPONDENT

Date of Decision : 25-05-1978

Acts Referred:

Income Tax Act, 1961 — Section 184, 185
Partnership Act, 1932 — Section 30, 4

Citation : AIR 1978 All 397 : (1978) 115 ITR 796

Hon'ble Judges : Satish Chandra, C.J;R.M. Sahai, J;K.C. Agrawal, J

Bench : Full Bench

Advocate : Ashok Gupta, for the Appellant; D.C. Chaturvedi, for the Respondent

Final Decision : Disposed Off

Judgement

Satish Chandra, C.J.—The reference has been referred to a Full Bench because the Division Bench felt that this Court's decision in Commr. of Income Tax v. Uttam Kumar Pramod Kumar 1975 Tax LR 339 requires reconsideration. The reported decision was also of the present assessee, but it was rendered in respect of earlier assessment years. The facts are hence identical.

2. The Tribunal has referred the following two questions of law for the opinion of this Court:--

(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was legally justified in its conclusion that the partnership deed dated 15th November, 1961, admitted the minors to the benefits of the partnership, and they were not full-fledged partners ?

(2) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the assessee firm was entitled to renewal of registration u/s 184(7) of the Income Tax Act, 1961.

3. In respect of the first question, the facts are that the assessee firm was

constituted under a partnership deed dated 15th November, 1961. The Income Tax Officer repelled the assessee's plea that the two minors had only been admitted to the benefits of the partnership. He held that they were treated as full-fledged partners, though they were minors. This could not be validly done. The firm was not entitled to registration. This view was upheld in appeal.

4. The assessee took the matter to the Tribunal. The Tribunal, on a construction of the partnership deed, held that the minors have been admitted to the benefits of the partnership. They were not full-fledged partners.

5. Clause 1 of the partnership deed provides-

"1. That the name of the partnership shall be Uttam Kumar Pramod Kumar Commission Agents Auraiya, district Etawah, and the share of each party shall be as under:--

(1) Rameshwar Dayal Party No. 1

?/4/- out of a rupee

(2) Govardhan Das Party No. 2

?/4/- out of a rupee

(3) Uttam Kumar Party No. 3

?/4/- out of a rupee

(4) Pramod Kumar Party No. 4

?/4/- out of a rupee".

6. Clauses 3 and 4 of the said deed provide -

"3. That on the close of the year an account shall be taken of all the assets and liabilities of the firm and also of the profits and losses of the firm. The net profit or loss shall be divided in between the parties according to their shares specified above and shall be credited or debited in their personal accounts.

4. That the parties Nos. 3 and 4 are the main financiers of the business. The parties may charge a reasonable interest on the capital."

7. It is not disputed that Uttam Kumar, Party No. 3, and Pramod Kumar, Party No. 4, were minors in Nov. 1961. From Clause 1 it is apparent that they were treated on par with parties Nos. 1 and 2. The fact that they were minors was not even mentioned. Under Clause 3 they were not only entitled to share profits but were liable to share losses as well. From Clause 4 it is apparent that they had financed the business.

8. It is further not disputed that the minors did not sign the partnership deed, nor did anyone else, acting as their guardian or otherwise, sign the deed of partnership on their behalf.

9. It is evident that the two minors were treated on par with the adult partners. They were liable to share in the losses.

10. The Supreme Court in Commissioner of Income Tax, Bombay Vs. Dwarkadas Khetan and Co., approved the view taken by this Court in HARDUTT RAY GAJADHAR RAM Vs. COMMISSIONER OF Income Tax., and observed-

"In Hardutt Ray Gajadhar Ram v. Commissioner of Income Tax, Malik, C. J. and Seth, J. hold that where a minor is admitted as a full partner with equal rights and obligations with adults, the deed is invalid."

11. Under the general law of partnership a minor cannot be a full partner liable to share in the losses. He can only be admitted to the benefits of the partnership. In other words, he can only be entitled to share in the profits, and not losses. Under the partnership deed in question the minors were to share losses as well. This partnership was illegal, and was not entitled to be registered.

12. The other defect, that no one signed the document acting on behalf of the minors, is equally fatal. A minor's guardian can do all that is necessary to effectuate the conferment and receipt of the benefits of the partner--vide Commissioner of Income Tax, Mysore Vs. Shah Mohandas Sadhuram, The funds or properties of a minor cannot be transferred to a partnership without the guardian of the minor doing so. When no one acting as the minor's guardian signs the document, no agreement with the minors comes into existence. The deed purporting to be a partnership with the minors is wholly invalid and cannot be registered. We are in agreement with the view taken in the earlier reported decision of this Court that the document in question, having made the minors full-fledged partners, was invalid and not entitled to registration. The earlier decision of this Court lays down the law correctly.

13. Accordingly we answer both the questions referred to this Court in the negative, in favour of the Department and against the assessee. The Commissioner will be entitled to costs, which are assessed at Rs. 200/-.