

Commissioner of Income-Tax, Bombay North, Kutch and Saurashtra

Vs

Patel & Co.

Civil Appeal No. 51 of 1957

(CJI S. R. Dass, N. H. Bhagwati, M. Hidayatullah JJ)

22.04.1959

JUDGMENT

BHAGWATI -

This appeal from the judgment and order of the High Court Saurashtra, dated the 18th October, 1955, concerns the registration of two, partnership firms under the provisions of the Saurashtra Income- tax Ordinance, 1949, corresponding to section 26A of the Indian Income-tax Act. Both the firms were named Patel & Co.

The firm with which we are concerned for the assessment year 1949-50 was the larger firm of Patel & Co. constituted by a deed of partnership dated the 6th February, 1948, and consisted of three partners, (1) Patel and Co. (hereinafter called the Smaller Patel and Co.), (2) Sheth & Co., and (3) Maharshi Dayanand Maha Vidhyalaya having shares of 7a. 6p., 7a. 6p., and 1a., respectively in the profit and loss of the partnership. This deed of partnership was signed by Arjun Kunverjee Patel, a partner of Patel & Co. (Smaller Patel & Co.), Jamnadas Bhanji Patel, a partner of Sheth & Co., and Nanji Kalidas Mehta, a trustee of Maharshi Dayanand Maha Vidyalaya. In the application for registration which was made to the Income-tax Officer for registration of this firm the same position obtained and the application was signed by these respective parties in the manner above described. This firm was registered by the Income-tax Officer by his order dated the 6th June, 1951, stating that the partners as were existing had applied for registration giving reasons why others could not sign and as the reasons given in their statements were genuine and the partnership was genuine, registration should be granted.

In regard to the assessment year 1950-51, what was sought to be registered was the partnership firm of Patel & Co. which came into existence under the deed of partnership dated 12th July, 1949. This firm consisted of two partners, Nanji Kalidas Mehta and Arjun Kunverjee Patel, the partners having 15a. and 1a. shares respectively in the profits and loss of the partnership. The deed of partnership was signed by both these partners and the application for registration made to the Income-tax Officer was also signed by them. This firm was also registered by the Income-tax Officer by his order dated the 6th June, 1951, on the very same grounds which were mentioned in regard to the firm which had been brought into existence by the deed dated the 6th February, 1948.

The Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, cancelled both these registrations holding that the deeds of partnership were not signed by all the partners and the firms could not, therefore, be registered. The firm the upon appealed to the Tribunal against the said order of the Commissioner and the Tribunal by its consolidated order dated the 18th April, 1953, affirmed the order of the Commissioner cancelling the registration in so far as assessment year 1949-50 was

concerned and reversed the order of the Commissioner cancelling the registration for the assessment year 1950- 51 and granted registration for the said assessment year commencing from July 1, 1949, and ending on December 31, 1949. As regards the period of 1st January, 1949, to 30th June, 1949, registration was thus refused.

At the instance of the firm the Tribunal stated the case and raised and referred the following questions of law to the High Court under section 108(1) of the Saurashtra Income-tax Ordinance, and under section 66(1) of the Indian Income-tax Act for its decision namely :

"(1) Whether on the true interpretation of the deed of partnership dated February 6, 1948, the partners were : (i) Smaller Patel & Co.; (ii) Sheth & Co.; (iii) Maharshi Dayanand Maha Vidyalaya; or (i) Arjun Kunverjee Patel; (ii) Jamnadas Bhanji Patel; (iii) Nandji Kalidas Meht ?

(2) Whether the firm Patel & Co. was entitled in law to be registered for the year 1949-50 under the Saurashtra Income-tax Ordinance and the rules made thereunder.

(3) Whether the registration granted by the Appellate Tribunal for the year 1950-51 should be for the entire year of account, namely, 1949 or for the period from July 1, 1949 to December 31, 194 ?"

The said reference was heard by the High Court and judgment was delivered on the 18th October, 1955, whereby the High Court answered the first referred question by stating that Smaller Patel & Co., Sheth & Co. and Maharshi Dayanand Maha Vidyalaya were partners of the firm constituted by the deed of partnership dated the 6th February, 1948, answered the second referred question in the affirmative and answered the third referred question by stating that the registration for 1950- 51 should be for the entire year of account namely, 1949. The Commissioner applied for a certificate for leave to appeal to this court and the High Court of Saurashtra by its order dated the 5th July, 1956, gave the requisite certificate under section 66A(2) of the Indian Income-tax Act. By the time this certificate came to be granted our decision in Dulichand Lakhminarayan v. Commissioner of Income-tax had been pronounced and the High Court, therefore, realised that its decision against which the application for certificate for leave had been filed could no longer be regarded as good law and granted the said certificate.

We are concerned in this with the registration of the firm for the assessment years 1949-50 and 1950-51. As regards the assessment year 1949-50, Shri Kolah had urged a preliminary objection in regard to the maintainability of the appeal. He had urged that there was no provision under the Saurashtra Income-tax Ordinance, 1949, under which any certificate for leave to appeal could be granted. It is true that the judgment of the High Court under appeal was pronounced on the 18th October, 1955, that is long after the Constitution came into force. This, however, could not avail the appellant because the questions of law which were referred for the decision of the High Court were in the exercise of its advisory or consultative jurisdiction and the provisions of the Constitution in regard to the certificate for leave to appeal to this court could not, therefore, in terms apply. Shri Rajagopala Sastri realised the force of this contention and fairly enough conceded that the appeal for assessment year 1949-50 could not be maintained. The appeal in so far as it concerned the assessment year 1949-50 will, therefore, be dismissed.

In regard to the assessment year 1950-51, the only grievance of the appellant was that the High Court had directed the registration of the firm for the entire year of account namely, 1949. It was

urged on behalf of the Appellate Assistant that this registration should have been confined only to the period between July 1, 1949, and December 31, 1949. Shri Kolah on behalf of the respondent stated before us that he was not pressing for maintenance of the order made by the High Court in this behalf and was willing that the registration should be confined only to the period between July 1, 1949, and December 31, 1949. We are of the opinion that this is a fair attitude to take up as the deed of partnership of the firm came into existence only on the 12th July, 1949. That being the position the appeal so far as the assessment year 1950-51 is concerned will be allowed and the direction given by the High Court will be modified in that the registration of the firm will be operative for the period between July 1, 1949, and December 31, 1949. The appeal will, therefore, be allowed partially to the extent mentioned above and the order of the High Court will be varied accordingly.

Under the circumstances of the case, both the parties having succeeded partially in the appeal, the proper order for costs will be that each party will bear and pay its own costs here as well as in the court below.

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