

SUPREME COURT OF INDIA

Commissioner of Income Tax, Madhya Pradesh

Vs.

Hukumchand Mannalal and Co.

C.A.No.1774 of 1969

(J. C. Shah and K. S. Hegde, JJ.)

20..07.1970

JUDGEMENT

SHAH, J.:

1. A firm styled Sir Hukumchand Mannalal and Company was formed under a deed dated July 16, 1948 to carry on the business of "managing and selling agents" of Hukumchand Mills Ltd. Sir Hukumchand and his son Rajkumar Singh were two of the five partners of the firm. They represented the interest of the Hindu undivided family of Sir Hukumchand and his sons. On March 31, 1950 the property of the Hindu undivided family was partitioned and the interest of the family in the partnership was taken over by a private limited company styled Sir Sarupchand Hukumchand Ltd.

2. For the assessment years 1950-51, 1951-52, 1952-53 and 1953-54 the Income-tax Officer granted registration of the firm under S. 26A of the Indian Income-tax Act, 1922. In 1954-55 the Income-tax Officer declined to grant registration. In appeal the Appellate Assistant Commissioner confirmed the order on the ground that two coparceners could not represent the interest of the Hindu undivided

family in a partnership. The Tribunal reversed the order. They held that Sir Hukumchand and his son Rajkumar Singh were partners in the firm on behalf of the Hindu undivided family and there was nothing in law which prevented two or more coparceners of a Hindu undivided family representing the family from entering into a partnership with a stranger or strangers.

3. At the instance of the Commissioner of Income-tax the following question was referred by the Tribunal:

"Whether in the facts and circumstances of the case the firm Hukumchand and Mannalal Company could be granted registration under S. 26A of the Act?"

The High Court answered the question in the affirmative. The Commissioner of Income-tax has appealed to this Court with certificate granted by the High Court.

4. In *Ram Laxman Sugar Mills v. Commr. of Income-tax, U.P.*, (1967) 66 ITR 613 (SC) this Court observed:

"A Hindu undivided family is a "person" within the meaning of the Indian Income-tax Act: it is however not a juristic person for all purposes, and cannot enter into an agreement of partnership with either another undivided family or individual. It is open to the manager of a joint Hindu family as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the manager and the other person, and by the partnership agreement no member of the family except the manager acquires a right or interest in the partnership. The junior members of the family may make a claim against the manager for treating the income or profits received from the partnership as a joint family asset, but they cannot claim to exercise the rights of partners nor be liable as partners."

This position in law was not disputed on behalf of the Commissioner. But it was urged that since two members of a coparcenary represented in the firm the same beneficial interest of a Hindu undivided family, and since they were incompetent to enter into a contract inter se, the partnership agreement could not be registered. There is no substance in that contention. In *Pichappa Chettiar v. Chokalingam Pillai*, AIR 1934 PC 192 the Judicial Committee observed approving the observations made in *Mayne's Hindu Law* (9th Edn.) at p. 398 to the following effect:

"Where a managing member of a joint family enters into a partnership with a stranger the other members of the family do not ipso facto become partners in the business so as to clothe them with

all the rights and obligations of a partner as defined by the Indian Contract Act, in such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger: the partnership will be governed by the Act."

It is clearly enunciated that one or more members of a Hindu undivided family may enter into a contractual relationship in the nature of a partnership with a stranger and they qua the stranger become partners. The view expressed by the Judicial Committee was approved by this Court in *Charandas Haridas v. Commr. of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad*, 39 ITR 202 = (AIR 1960 SC 910).

5. The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into a contract inter se or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual: it is restricted only in the manner and to the extent provided by the Indian Contract Act. Partnership is under Section 4 of the Partnership Act the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all: if such a relation exists, it will not be invalid merely because two or more of the persons who have so agreed are members of a Hindu undivided family. It is now settled law that in considering an application for registration of a firm, the Income-tax Officer is not concerned to determine in whom the beneficial interest in the share in the partnership vests, *Commr. of Income-tax v. A. Abdul Rahim and Co.*, 55 ITR 651 = (AIR 1965 SC 1703); *Commr. of Income-tax, Madras v. Bagyalakashmi and Co.*, 55 ITR 660 = (AIR 1965 SC 1708).

6. In our judgment, the High Court was right in answering the question in the affirmative.

7. The appeal fails and is dismissed with costs.

Appeal dismissed.