

Commissioner of Income-Tax, Andhra Pradesh

Vs

Jayalakshmi Rice and Oil Mills Contractor Co.

Civil Appeal No. 545 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

05.01.1971

JUDGMENT

GROVER, J. -

This is an appeal from a judgment of the Andhra Pradesh High Court arising out of a reference made under section 66(1) of the Indian Income-tax Act, 1922, hereinafter called the "Act", of the question whether, on the facts and in the circumstances of the case, the application under section 26A of the Act was filed out of time.

The facts are not in dispute. The assessee-firm was constituted under a deed of a partnership dated October 6, 1955. It was to come into existence with effect from November 5, 1954. The assessee filed an application under section 26A of the Act for registration of the firm for the assessment year 1956-57. The "previous year" of the firm was shown as the year ending October 26, 1955. This application was received by the Income-tax Officer on October 14, 1955. On October 20, 1955, the assessee filed before the Register of Firms a statement under section 58 of the Indian Partnership Act, 1932. On November 2, 1955, the Register of Firms filed the statement of the assessee and made entries in the register of firms. On March 23, 1961, the Income-tax Officer passed an order refusing to register the firm under section 26A, inter alia, for the reason that the application had not been made in time. The appeal taken to the Appellate Assistant Commissioner by the assessee failed. The Income-tax Appellate Tribunal also upheld the order of the Income-tax Officer and the Appellate Assistant Commissioner. On that a reference was sought and the High Court answered the question referred in favour of the assessee on the ground that the application had been filed in time.

Section 26A of the Act provides that an application may be made to the Income-tax Officer on behalf of any firm constituted under an instrument of partnership specifying the individual shares of the partners for registration for the purposes of the Act. The application has to be made by such person or persons and at such time and has to contain such particulars, etc., as may be prescribed. Rules 2 to 6(b) of the Rules made under section 59 of the Act deal with registration of firms. We are concerned with the following material portion of rule 2 :

"Such applications shall..... be..... made.....

(a) where the firm is not registered under the Indian Partnership Act, 1932 (IX of 1932), or where the deed of partnership is not registered for the registration is being made for the first time under the Act,

(i) within a period of six months of the constitution of the firm or before the end of

the 'previous year' of the firm, whichever is earlier, if the firm was constituted in that previous year;

(ii) before the end of the previous year in any other case;

(b) where the firm is registered under the Indian Partnership Act, 1932 (IX of 1932), or where the deed of partnership is registered under the Indian Registration Act, 1908 (XVI of 1908), before the end of the previous year of the firm....."

Now it is common ground that the application for the registration was not made within the period prescribed by rule 2(a). What has been urged throughout on behalf of the assessee is that the application to the Income-tax Officer was governed by rule 2(b) and was in time as the firm should be deemed to have been registered not on the date on which it was actually registered by the Registrar of Firms but with effect from the date on which the application for registration was presented to the Registrar. In other words the firm should be considered to have been registered on October 20, 1955, on which date the statement under section 58 of the Partnership Act was filed by the assessee before the Registrar of Firms.

The real question which has to be determined is whether the registration of a firm under the Partnership Act takes place with effect from the date on which the application for the registration is made in accordance with section 58 of that Act. Section 58(1) provides that the registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated accompanied by the prescribed fee. Under section 59 when the Registrar is satisfied that the provisions of section 58 have been duly complied with he shall record an entry of the statement in a register called the "register of firms" and shall file the statement. In *Ram Prasad v. Kamta Prasad*, it was laid down that the registration of a firm under the Partnership Act takes place only when the necessary entry is made in the register of firms. Even under section 69 of the Partnership Act, which deals with the effect of non-registration, it has been consistently held that the registration of a firm subsequent to the filing of the suit did not cure the defect : See *Danmal Purshotam Dass v. Babu Ram Chhote Lal*. Thus, under the partnership law it can be taken to have been settled by decisions of High Courts from a long time that the registration of a firm takes place only when the necessary entry is made in the register of firms under section 59 of the Partnership Act by the Registrar. It is true that sub-section (1) of section 58 employs language which, without anything more, may lend support to the view that the registration of a firm may be effected merely by sending an application which would mean that as soon as an application is sent and if entry is made under section 59 pursuant to it the registration would be effective from the date when the application was presented. But section 58 (1) is not to be read in isolation and has to be considered along with the scheme of the other provisions of the Act, namely, section 59 and section 69. The latter section may not have a direct bearing on the point under our consideration but it throws light on what was contemplated by the legislature with regard to the point of time when the firm could be regarded as registered. The Kerala High Court has in *Kerala Road Lines Corporation v. Commissioner of Income-tax*, clearly expressed the view that reading section 58 and 59 of the Indian Partnership Act together, a firm cannot be said to be registered when the statement prescribed by section 58 and the required fee are sent to the Register and that the registration of the firm is effected only when the entry of the statement is recorded in the register of firms and statement is filed by the Registrar as provided in section 59. In that case also an identically similar question arose in respect of registration of a firm under section 26A of the Income-tax Act.

The High Court, in the judgment under appeal, referred to the statement extracted from the report of

the Special Committee which has been appointed by the Government of India to examine the provisions of the Bill before it came to be passed by the Central Legislature as a Partnership Act and Reference was made in particular to the statement relating to clause 58 corresponding to section 59 of the Partnership Act to the effect that the registrar was a mere recording officer and that he had no discretion but to record the entry in the register of firms. We are unable to see how that statement can be taken into consideration for the purpose of interpreting the relevant provisions of the Partnership Act. We also cannot concur with the other reasoning of the High Court for coming to the conclusion that the partnership should be deemed to have been registered on the date when the application was presented and that the requirement of rule 2(b) would be satisfied if it became registered under the Partnership Act even after the application was filed.

For the reasons given above the appeal is allowed and the judgment of the High Court is set aside. The answer to the question referred must be given in the affirmative and against the assessee. The appellant shall be entitled to costs in this Court.

Appeal allowed.

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