

Sher-E-Punjab Silk Stores

Vs

Commissioner of Income Tax, New Delhi

Civil Appeal No. 1690 of 1969

(K. S. Hegde, P. Jagmohan Reddy JJ)

11.12.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by special leave. The appellant is the assessee. In this case we are concerned with his assessment for the assessment year 1958-59. The relevant previous year ended on March 31, 1958. The assessee-firm applied for renewal of its registration under Section 26-A of the Indian Income Tax Act, 1922 (in short "the Act"), before the Income Tax Officer on May 26, 1958. In that application it mentioned that the previous years' income had been divided among the partners. The Income Tax Officer rejected that application. He did not believe the version of the assessee that the previous years' income had been divided. In appeal, the Appellate Assistant Commissioner agreed with the conclusion reached by the Income Tax Officer. On a further appeal being taken to the Income Tax Appellate Tribunal, the Tribunal agreed with the conclusions reached by the lower authorities. Before the Tribunal yet another contention appears to have been taken. That contention was that at any rate the partners having divided the income of the previous year as evidenced by the balance-sheet before the assessment was made, the assessee-firm was entitled for its registration under Section 26-A. The Tribunal did not go into that question. The High Court agreed with the view taken by the Tribunal.

2. The only question that arises for decision in this case is whether it was incumbent on the part of the assessee to have divided the profits of the previous year before it made its application for renewal of the registration certificate. For deciding this question it is necessary to refer to the relevant provisions of the Act as well as the Rules. Section 26-A of the Act reads thus :

"26-A. Procedure in registration of firms. - (1) 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 this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income Tax Officer in such manner as may be prescribed".

3. Turning to the relevant rules, they are found in Rules 2, 3 and 6. Those rules read thus :

"Rule 2. - Any firm constituted under an Instrument of Partnership specifying the individual shares of the partners may, under the provisions of Section 26-A of the Indian Income Tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income Tax Officer, the particulars contained in the said Instrument on application made in this behalf.

Such application shall be signed by all the partners (not being minors) personally, or in the case of a dissolved firm by all persons (not being minors) who were partners in the firm immediately before dissolution and by the legal representative of any such partner who is deceased, and shall, for any year of assessment up to and including the assessment for the year ending on March 31, 1953, be made before the February 28, 1953, and for any year of assessment subsequent thereto, 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 under the Indian Registration Act, 1908 (XVI of 1908), and the application for 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, and

(c) where the application is for renewal of registration under Rule 6 for any year, before the 30th day of the June of that year :

Provided that the Income Tax Officer may entertain an application made after the expiry of the time-limit specified in this rule, if he is satisfied that the firm was prevented by sufficient cause from making the application within the specified time."

"Rule 3. - The application referred to in Rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original Instrument of Partnership under which the firm is constituted, together with a copy thereof : Provided that if the Income Tax Officer is satisfied that for some sufficient reason the original Instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners (not being minors) or, where the application is made after dissolution of the firm, by all the persons referred to in the said rule, to be a correct copy and in such a case the application shall be accompanied by a duplicate copy.

FORM IFORM OF APPLICATION FOR REGISTRATION OF A FIRM UNDER SECTION 26-A OFTHE INDIAN INCOME TAX ACT, 1922.

To

The Income Tax Officer,

Dated

19. Income-tax year 19 /19.

1.

2.

We do hereby certify that the profits (or loss, if any) of the previous year were/will be divided or credited period up to the date of dissolution as shown in were/will be Section B of the Schedule and that the information given above and in the attached Schedule is correct. (Signatures) (Address) Note : This application must be signedany such person who is deceased.

SCHEDULE

Name of Address Date of admitt-

(1)

(1)

(2)

Remarks partner ance to partne- Interest Salary Share in rship. on capi- or co- the bal- tal or mmiss- ance of loans (if ion profits any). from (or loss), firm etc.

1

2

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6

7

(A) Particulars of the firm as constituted at the date of this application.

(B) Particulars of the apportionment of the income, profits or gains (or loss) of the

business, profession or vocation in the previous year between the partners who in that previous year were entitled to share in such income, profits or gains (or loss).
 (Applicable where the application is made after the end of the relevant previous year).

Notes. -

(1) If the interest, salary and/or commission columns with the letter "R" (In other cases the interest, salary and/or commission may exceed the total profits so as to leave a balance of net loss divisible in column 6.) (2) If any partner is entitled to share in profits but is not liable to bear a similar proportion of any losses, this fact should be indicated by putting against his share in column 6 the letter 'P'.##

Rule 6. - Any firm to whom a certificate of registration has been granted under Rule 4 may apply to the Income Tax Officer to have the certificate of registration renewed for a subsequent year. Such application shall be signed personally by all the partners (not being minors) of the firm or, where the application is made after dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before dissolution and by the legal representative of any such person who is deceased, and accompanied by a certificate in the form set out below. The application shall be made before the 30th day of June of the year for which assessment is to be made provided that the Income Tax Officer may entertain an application made after the expiry of the said date, if he is satisfied that the firm was prevented by sufficient cause from making the application before that date.

FORM OF APPLICATION FOR THE RENEWAL OF REGISTRATION OF A FIRM UNDER SECTION 26-A OF THE INDIAN INCOME TAX ACT, 1922. To The Income Tax Officer Dated 19. Assessment for the Income-tax Year 19 /19.1.2.3. We do hereby further certify that the profits (or loss, if any) of the previous year were/period up to the date of dissolution were/will be divided or credited as shown below : Particulars of the apportionment of the income, profits or gains (or loss) of the business, profession or vocation in the previous year or the period up to the date of dissolution between the partners who were entitled to share in such income, profits or gains (or loss).-----

-----Name of Address Date of admitt- (1) (1) (2) Remarks partner
 to partne- Interest Salary Share in rship on capi- or co- the bal- tal or mmiss- ance of
 loans (if ion profits any) from (or loss) firm. etc.-----
 ----- 1 2 3 4 5 6 7-----

-----Notes. - (1) If the interest, salary and/orloss divisible in column 6. (2) If any partner is entitled his share in column 6 the letter 'P'. (Signatures) (Address) Note. - This application must be signed personally of any such person who is deceased."##

4. From a reading of these provisions it is clear that in the case of an application for renewal it is incumbent on the part of the assessee to have divided the previous year's profits. This conclusion appears to be obvious from Section 26-A, read with Rules 2, 3, 6 and the forms set out earlier. The contention of Mr. Sharma, the learned counsel for the assessee, that if the relevant provisions are interpreted in the manner that we have done it leads to hardship to the assessee, is not relevant in view of the plain language of the provisions.

5. Our conclusion in this regard receives support from the decision of the Madras High Court in *Surajmalls v. Commissioner of Income Tax* ((1961) 43 ITR 491 (Mad)) and that of the Allahabad High Court in *Ganesh Lal Laxmi Narain v. Commissioner of Income Tax*. ((1968) 68 ITR 696 (All)) In *Khanjan Lal Sewak Ram v. Commissioner of Income Tax*, ((1972) 83 ITR 175 (SC) : (1971) 3 SCC 662) this Court had ruled that Paragraph 3 of Rule 6 is mandatory. We see no merit in this appeal. It is dismissed with costs.

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