

Sri Ramamohan Motor Service

Vs

Commissioner of Income-Tax, Andhra Pradesh

Civil Appeals Nos. 471 to 476 of 1970

(K.S. Hegde, H.R. Khanna JJ)

11.04.1973

JUDGMENT

HEGDE J. -

These are connected appeals. A Common question of law arises in these appeals. That question is :

"Whether on the facts and in the circumstances of the case, the assessee-firm is entitled to registration under section 26A of the Act ?"

Application under section 26A of the Indian Income-tax Act, 1922 (to be hereinafter referred to as "the Act"), relating to assessment years 1956-57 to 1961-62, relevant accounting years being calendar years 1955, 1956, 1957, 1958, 1959 and 1960, were made by the appellant to the Income-tax Officer. The Income-tax Officer accepted the application relating to the assessment years 1956-57 and granted the registration asked for, by his order dated June 30, 1960. At the same time he granted renewals of the registration in respect of other assessment years. But the Commissioner of Income-tax, in exercise of his powers under section 33B of the Act, called for and examined the papers of the case and after hearing the assessee set aside the orders made by the Income-tax Officer. The assessee took up the matter in appeal to the Income-tax Appellate Tribunal. The Tribunal rejected its appeal. Thereafter, the question of law set out earlier was referred to the High Court under section 66(1) at the instance of the assessee. The High Court under section 66(1) at the instance of the assessee. The High Court answered that question in the negative, and in favour of the revenue. Hence these appeals, by special leave.

The assessee-firm was constituted under a deed of partnership dated February 5, 1955; but the deed shows that the firm came into existence on January 1, 1955. The firm consisted of five partners, namely :- (1) B. Satyanarayanamurthy, (2) Bapaiah Pantulu, (3) B. Seetaramaiah, (4) B. Subramanyan and (5) Rammohanrao. The last one was a minor, The partnership deed shows that he was party to the same, being represented by his father, B. Satyanarayanamurthy. One of the terms of the partnership deed is that the profits and loss of the business should be divided and borne between the partners in equal shares. The application under section 26A for the assessment years 1956-57 was made on June 30, 1955, the last date for making the application. Along with that application, as required by the rules, a copy of the partnership deed was also sent to the Income-tax Officer.

On October, 18, 1955, an application was made by the partners of the firm to the Registrar of Firms to register the firm. The Registrar, by his letter dated December 13, 1955, objected to the registration of the firm on the ground that the partnership was invalid under section 30 of the Partnership Act, as one of the partners was minor. After the receipt of that letter, the four adult

partners by their letter dated December 18, 1955, informed the Registrar that "the minor is admitted to the benefits of the partnership with the consent of all the partners. He has nothing to do with the loss of the firm. We therefore agree to record our consent and amend the application accordingly and send the same to the Registrar of Firms as directed." After the receipt of that letter, the Registrar of Firms registered the assessee-firm on January 10, 1956. It is not known whether a copy of that letter had been sent to the Income-tax officer and if so when it was sent.

As mentioned earlier, the Commissioner of Income-tax set aside the registration granted by the Income-tax Officer. He came to the conclusion that the partnership in question was ab initio void. He rejected the contention that the letter sent to the Registrar of Firm validated the partnership deed. He further opined that several of the term in the partnership deed adversely affected the minor and, therefore, the partnership cannot be held to be valid. On appeal, the Tribunal upheld the conclusions reached by the Commissioner. In addition, it held that the applications for registration as well as for renewal did not conform to the requirements of the law and consequently they were invalid applications. The High Court in an elaborate judgment affirmed the diocesan of the Tribunal that partnership was not laid in law. It did not address itself to the question whether the applications made for registration and renewal were otherwise invalid. We are of opinion that the applications for registration and renewal did not conform to the requirements of the law and consequently the registration or the renewals as the case may be, could not have been granted. In that view we have not though it necessary to go into the question whether the partnership was validated as a result of the letter written by the adult partners to the Registrar of Firms on December 18, 1955.

Section 26A prescribes :

"(1) Application may be made to the Income-tax Officer on behalf of any form constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the registration 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 manners as may be prescribed."

Sub-section (5) of section 59 prescribes that :

"Rules made under this section shall be published in the official Gazette and shall thereupon have effect as if enacted in this Act."

Rules 2 framed under the Act says that :

"Any firm constituted under an Instrument of partnership specifying the individual shares of the partners may, under the provisions of section 26A 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) who were partners in 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 partner

who is deceased, and shall, for any years of assessment up to and including the assessment for the years ending on the 31st day of March, 1953, be made before the 28th February, 1953, and for any years 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 years of the firm; and

(c) where the application is for renewal of registration under rule 6 for any year, before the 30th day of 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."

The assessee-firm was not registered under the Indian Partnership Act before the application under section 26A of the Act was made nor was the partnership deed registered under the Indian Registration Act. The partnership deed submitted along with the application for registration disclosed that the partnership constituted under that deed was void in view of section 30 of the Partnership Act as one of the five partners was a minor. Hence the application made for registration was an invalid application. The subsequent alteration of one of the terms of the partition deed, even if validly made, cannot validate the application made because the alteration in question was made long after the time prescribed for making the application had expired and there is nothing on record to show that the Income-tax Officer had condoned that delay in exercise of his power under the proviso to rule 2. If the original order of registration was unauthorised, the subsequent renewals of that registration must also be held to be unauthorised.

Rule 3 requires the assessee to make application under that rule in the form annexed to that rule. Column 6 of the form requires the applicants to mention "the Share in the balance of profits (or loss) (annas and pies in the rupee)". Note 2 in that form lays down that "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 4(1) prescribes the conditions and the manner in which the Income-tax Officer can grant the certificate asked for. Sub-rule (2) of that rule says that if the conditions mentioned in sub-rule (1) are not satisfied, the Income-tax Officer "shall pass an order in writing refusing to recognise the instrument of partnership, or the certified copy thereof, and furnish a copy of such order to the applicants".

Rule 6 lays down the form in which renewal applications were required to be made. Column 6 of 5 that form is similar to column 6 of the form under rule 3. It was found by the Tribunal that both in the application made for registration of the firm as well as in the applications made for renewal of registration, in column 6 of the form the letter "P" was not mentioned. On the other hand the minor's share was shown as 1/5th which means his share both in the profits as well as in the loss. As mentioned earlier, the record before us does not show whether the Income-tax Officer was informed of the letter written to the registrar of firms on December 18, 1955, and if so on what date he was informed about it.

From the facts set out above, it is clear that the applications made by the partners of the firm did not comply with the requirements of the rules. Hence, those applications cannot be considered as valid applications.

In *Rao Bahadur Ravulu Subba Rao v. Commissioner of Income-tax, Venkatarama Ayyar J.*, speaking for the court, observed :

"Thus, if a firm is registered, it ceases to be a unit for purposes of taxation and the profits earned by it are taken, in accordance with the general law of partnership, to have been earned by the individual partners according to their shares, and they are taxed on their individual income including their share of profits. The advantages of this provision are obvious. The rate of tax chargeable will not be on the higher scales provided for incomes in the higher levels but on the lower one at which the income of the individual partners is chargeable. Thus, registration confers on the partners a benefit to which they would not have been entitled but for section 26A and such a right being a creature of the statute, can be claimed only in accordance with the statute, which confers it, and a person who seeks relief under section 26A must bring himself strictly within its terms before he can claim the benefit of it. In other words, the right is regulated solely by the terms of the statute, and it would be repugnant to the character of such a right to add to those terms by reference to other laws. The statute must be construed as exhaustive in regard to the conditions under which it can be claimed."

This decision lays down that before a person can claim the benefit of section 26A, he must strictly comply with the requirements of that section. In view of sub-section (2) of that section, he is also required to comply with the requirements of the relevant rules. Failure to comply either with the requirement of sub-section (1) or sub-section (2) of section 26A disentitles the applicant to the benefit of that section. The same view was taken by this court in *N. T. Patel & Co. v. Commissioner of Income-tax*. The decision of this court in *Khanjan Lal Sewak Ram v. Commissioner of Income-tax* lends support to that conclusion.

It was contended by Mr. Chagla, learned counsel for the appellants that we should not allow technicalities to come in the way of our doing substantial justice to the parties. According to him substantial compliance with the rules set out above is sufficient to meet the ends of justice. In support of his plea he placed reliance on section 185(2) of the Income-tax Act, 1961. We are unable to accede to that contention. Section 185(2) of the 1961 Act is not retrospective in operation nor were the requirements of that provision complied with. The plea that substantial compliance with the rules is sufficient stands negated by the decisions referred to earlier.

Yet another contention taken by Mr. Chagla was that the High Court did not base its decision on the

grounds mentioned above; but it decided against the appellants on the ground that the partnership is ab initio void. Hence, we should not take up those grounds afresh. This contention is irrelevant. As mentioned earlier, one of the grounds on which the Tribunal upheld the order of the Commissioner was that the applications made did not conform to the requirements of the law. We agree with that conclusion.

In the result these appeals fail and they are dismissed. Taking into consideration the facts and circumstances of the case, we direct the parties to bear their own costs in this court.

Appeals dismissed.

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