

Commissioner of Income Tax, Patiala

Vs

M/s Jagannath Pyarelal

Civil Appeals Nos. 124 of 1974

(Sabyasachi Mukharji Ranganath Misra JJ)

29.08.1985

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave is granted in the abovementioned two petitions.

2. These appeals by special leave arise out of the judgment and order of the Punjab and Haryana High Court in respect of the assessment year 1960-61, under the Indian Income Tax Act, 1922, holding that the registration of the firm was wrongly refused. A reference was made under Section 66(2) of the Indian Income Tax Act, 1922, to the High Court in respect of the following question :

Whether, on the facts and in the circumstances of the case, the registration of the firm has rightly been refused ?

3. Originally there were 10 partners who were members of two families and a firm came into existence under an instrument dated March 27, 1952, when Padam Kumar was a minor. When he attained majority on October 1, 1956, he opted to continue as a full-fledged partner and a fresh instrument of partnership was executed on October 8, 1956, by 11 partners including Shri. Rabinder Kumar. A fresh deed was executed to that effect on April 1, 1959, and an application dated September 2, 1959, for registration of the said firm under Section 26-A of the said Act was filed on September 30, 1959. Shri. Rabinder Kumar had left India for United States of America for prosecuting his studies on January 29, 1959. It was found by the Tribunal that Rabinder Kumar had not signed the application as indeed he was away to U.S.A. from January 29, 1959. This finding was not challenged by the assessee before the High Court. The Tribunal held that the firm was not genuine and the application was not proper as Rabinder Kumar had not signed and the application for registration of the partnership was not in accordance with rules. These findings were not challenged before the High Court. The High Court, however, was of the opinion that another opportunity should have been given to show whether the firm was actually in existence or not. The High Court held that Rabinder Kumar had acquiesced in the constitution of the firm and had accepted the position and, as such, the firm was entitled to be registered. The conditions required to be fulfilled have been laid down by this court in the case of R. C. Mitter & Sons v. CIT ((1959) 36 ITR 194 : 1959 Supp 2 SCR 641 : AIR 1959 SC 868). This Court held that (Ed. As in ITR headnote)

In order that a firm may be entitled to registration under Section 26-A of the Income-tax Act, the following essential conditions must be satisfied, viz., (i) the firm should be constituted under an instrument of partnership, specifying the individual shares of the partners; (ii) an application on

behalf of, and signed by, all the partners and containing all the particulars as set out in the Rules must be made; (iii) the application should be made before the assessment of the firm under Section 23, for that particular year; (vi) the profits or losses, if any, of the business relating to the accounting year should have been divided or credited, as the case may be, in accordance with the terms of the instrument; and (v) the partnership must be genuine and must actually have existed in conformity with the terms and conditions of the instrument of partnership, in the accounting year.

4. As it appears, factually neither the deed of partnership was signed by Rabinder Kumar nor was the application for registration made in accordance with the rules. Therefore, the firm was not entitled to registration under Section 26-A of the Indian Income Tax Act, 1922. The law enjoins that the deed of partnership must be signed personally by each partner and this position is settled by the decision of this Court in *Rao Bahadur Ravulu Subba Rao v. CIT* (30 ITR 163, 166 : AIR SC 604 : 1956 SCR 577). Furthermore, Rules 2 and 4 of the Income Tax Rules, 1922, enjoined that the application for registration must be made 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. Neither of these conditions was fulfilled in the facts and circumstances of the case as found by the Tribunal and these were not negated by the High Court. In these circumstances we are of the opinion that the Tribunal was right in refusing the registration of the firm and the High Court was not right in holding otherwise. The question referred must be answered by saying that the registration of the firm was rightly refused.

5. The appeals are, therefore, allowed and the decision of the Tribunal is restored. The appellant is entitled to the costs of these appeals.

</html