Commissioner of Income-tax, Andhra Pradesh

Vs

B. Posetty & Co.

Civil Appeal No. 1209 (NT) of 1978

(B.P. Jeevan Reddy, S.B. Majmudar JJ)

08.01.1996

JUDGMENT

1.The short question involved in this appeal is as to wheather a sub-partnership entered into by one of the partners of the firm carrying on the business of vending liquor or abkari business, governed by the provisions of Section 14 of the Andhra Pradesh (Telangana Area) Abkari Act, 1316 F (hereinafter referred to as 'Abkari Act') during the relevant assessment year 1966-67 could be registered under the provisions of the Income Tax Act, 1961 when such sub-partnership was entered into without following the statutory provisions of Section 14 of the Abkari Act. The said Section lays down that the lessee of liquor business cannot take partners without prior permission of Government. The Income Tax Officer refused registration holding that the sub-partnership contravened the aforesaid provision and hence it was void and unenforceable, being formed only to share the profits of abkari business. The said view was confirmed by the Appellate Assistant Commissioner. However, on assessee's further appeal the Income Tax Appellate Tribunal held that the sub-partnership had all the insignia of a valid partnership and was required to be registered. The following question was referred by the Tribunal at the instance of the Revenue:

> "Whether on the facts and in the circumstances of the case, the sub-partnership is entitled to the benefits of registration under the Income-Tax Act, 1961, for the assessment year 1966-67".
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> That question was answered by the High Court of Andhra Pradesh in favour of the assessee and against the Revenue. The Revenue has challenged the said decision in this appeal.

2. At the time of final hearing of this appeal it was brought to our notice that in the case of Addl. Commr. of Income-tax v. Degaon Ganga Reddy G. Ramakrishna & Co., (1995) 214 ITR 650 : (1995 AIR SCW 3236) a Division Bench of this Court consisting of J. S. Verma and K. S. Paripoornan, JJ., has taken a view in a similar matter in favour of the assessee. It was held that the members of the sub-partnership did not become partners of the main firm. They constituted different and distinct entities for the purposes of the Income Tax Act. The sub-partnership formed by the individual partners of the main partnership which was doing abkari business, with some others, was merely to finance the business of the main partner doing abkari business and share the profits and losses accruing to or received by him from the main firm. The sub-partnership was not, therefore, in violation of Section 14 of the Abkari Act.

3. The aforesaid decision squarely covers the question in controversy before us. However, learned counsel for the Revenue vehemently contended that the said decision required reconsideration. He submitted that a Division Bench of this Court consisting of one of us, B. P. Jeevan Reddy, J., and B. N. Kirpal, J., in Biharilal Jaiswal v. Commr. of Income Tax, 1995 (6) SCALE 508 : (1995 AIR SCW 4587) had an occasion to consider the question whether the income tax authorities were bound to register a partnership firm which was contrary to the provisions of State Excise enactment. In the aforesaid decision it was held that such partnership could not be registered under the provisions of the Income Tax Act. In this connection following observations were made by the Division Bench : (At p. 4594 of AIR)

> "Any agreement whereunder the licence is transferred, sub-let or a partnership is entered into with respect to the privilege/business under the said licence, contrary to the prohibition contained in the relevant excise enactment, is an agreement prohibited by law. The object of such an agreement must be held to be of such a nature that if permitted it would defeat the provisions of the excise law within the meaning of Section 23 of the Contract Act.
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> When the law prohibits the entering into a particular partnership agreement, there can be in law no partnership agreement of that nature. The question of such an agreement being genuine cannot, therefore, arise.
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> The grant of registration under the Income Tax Act, it must be remembered, confers a substantial benefit upon the partnership firm and its members. There is no reason why such a benefit should be extended to persons who have entered into a partnership agreement prohibited by law. One arm of law cannot be utilised to defeat the other arm of law. Doing so would be opposed to public policy and bring the law into ridicule. It would be wrong to think that while acting under the Income Tax Act, the Income-Tax Officer need not look to the law governing the partnership which is seeking registration.
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> This holding does not mean that such on illegal partnership cannot be taxed. It is certainly bound to be taxed either as an unregistered partnership firm or as an association of persons".

It was further contended that the decision of this Court in Degaon Ganga Reddy (1995 AIR SCW 3236) (supra) had assumed that the sub-partnership was only to finance the business of a partner but the Court had not considered the moot question whether such sub-partnership was merely a loan transaction or a financial agreement and if it was a merely a financial agreement whether it could ever constitute a partnership within the meaning of Section 4 of the Indian Partnership Act, 1932 which reads as under :

> "'Partnership' is 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".

He submitted that even assuming as this Court in Degaon Ganga Reddy (1995 AIR SCW 3236) (supra) held that this sub-partnership was merely a financing agreement or was entered into to finance the business of a partner, the business of the sub-partnership was obviously to inter se share the profits of the main abkari partnership business which fell to the share of one of the partners who formed the sub-partnership with his other financing sub-partners and, therefore, the division of

profits inter se the sub-partners was certainly the division of at least a part of the profits of the main abkari business. And if that was not so, and it was merely a financing agreement, the sub-partnership would fail on the touchstone of Section 4 of the Indian Partnership Act as then there would be no agreement to share the profits of business. As the profits of the business to be shared by the sub-partners were the profits of the main business, namely, abkari business. Section 14 of the Abkari Act squarely got attracted and made even the sub-partnership for sharing at least a part of the main partnership profits illegal as Section 14 of the Abkari Act was admittedly not complied with. Consequently, the decision of this Court in Biharilal Jaiswal (1995 AIR SCW 4587) (supra) would apply even in case of such sub-partnership through it was true that the said decision was rendered in connection with the partners of the main abkari business taking in more partners in the main abkari business. He also vehemently contended that if such sub-partnerships are treated to be legal and valid and are held to be entitled to registration under the Income Tax Act then a situation would arise wherein the main partners in abkari business would enter into such devices and can divert the profits of abkari business by passing the provisions of Section 14 of the Abkari Act.

4. In our view, this is a matter which should properly be considered by a Bench of three learned judges so that an authoritative pronouncement is made on the question arising herein. The papers may be placed by the Registry before Hon'ble the Chief Justice for placing this matter before a Bench of three learned judges.

Order accordingly.