

# SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Rangila Ram

(S.P. Bharucha, U.C. Banerjee and N.S. Hegde JJ.)

03.08.2000

## ORDER

1. The Revenue is in appeal against the order of a Division Bench of the High Court of Himachal Pradesh. Thereby, the High Court answered against the Revenue the following question:

"Whether, in the facts and circumstances of the case, the Appellate Tribunal was right in law in ordering that the claim of the assessee-firm for registration under Section 185 of the Income-tax Act, 1961, be accepted ?"

It did so relying upon an earlier judgment.

2. The question arose out of an order made by the Income-tax Appellate Tribunal which had held that the registration of the partnership in question under the Income-tax Act had not been rightly refused.

3. The partnership (the assessee) dealt in liquor. Only some of the partners held the liquor licence.

Our attention was drawn by the learned Solicitor-General, appearing for the Revenue, to the judgment of this court in *Bihari Lal jaiswal v. C/T* [1996] 217 ITR 746. It was held that a licensee could not be "permitted to bring in strangers into the business, which would mean that instead of the licensee carrying on the business, it would be carried on by others--a situation not conducive to effective implementation of the excise law and consequently deleterious to public interest. For this very reason the transfer or subletting of the licence is uniformly prohibited by several State excise enactments. It, therefore, follows that any agreement whereunder the licence is transferred, sublet 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." Accordingly, it was held that this not being a genuine agreement, it could not be registered under the Income-tax Act.

Our attention was also drawn to the judgment in *CIT v. Hardit Singh Pal Chand and Co.* [1979] 120 ITR 289 (P & H), where (at page 291) the rules applicable, even in the State of Himachal Pradesh, have been set out, and there is no doubt that a liquor licensee may not enter into a partnership without prior permission.

4. The basic principle, as it seems to us, is that the liquor business is *res extra commercium*. No one

may deal in liquor without express permission. It is only the licensee who is granted such permission. If he enters into a partnership to deal in liquor, all the other partners would, as partners, also be dealing in liquor and holding the same. This would be contrary to the basic principle and illegal.

5. Learned counsel for the assessee relied upon a judgment of this court in *Addl CIT v. Degaon Ganga Reddy G. Ramakrishna and Co.* [1995] 214 ITR 650; [1995] Suppl. 2 SCC 146. It dealt with the A. P. (Telangana Area) Abkari Act, which contained a prohibition similar to that stated above. This court held (page 655):

"In view of the clear findings of fact recorded by the Tribunal, there can be no doubt that the sub-partnerships formed by individual partners of the main partnership which were lessees, with some others, merely to finance the business of a partner of the main firm doing abkari business and share the profits and losses accrued to or received by him from the main firm, were not in violation of Section 14 of the Abkari Act. For this reason, there is no basis to hold that the sub-partnerships were in violation of Section 14 of the Abkari Act and, therefore, illegal. The Tribunal was right in holding that in the facts and circumstances of the case, the assesses-sub-partnerships being found to be genuine were entitled to be registered under the Income-tax Act. The High Court has correctly answered the question of law referred to it, against the Revenue and in favour of the assessee."

6. The facts of the case are entirely different. The sub-partnerships were not formed to do business in liquor but, as the Tribunal clearly found, to finance the business of the partner of the main firm doing abkari business and share the profits and losses accrued to or received by him therefrom. It was in these circumstances that it was held that such sub-partnerships were not disentitled to registration under the Income-tax Act.

7. In the result, the appeal is allowed. The judgment and order under appeal is set aside and the question is answered in the negative and in favour of the Revenue.

8. No order as to costs.