

**KERALA HIGH COURT**

Kerala Road Lines Corporation

Vs.

Commissioner of Income-tax

I.T. Referred case No. 15 of 1962

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

12.08.1963

**JUDGMENT**

**M.S. Menon, C.J.**

1. This is a reference under Section 66(1) of the Indian Income-tax Act, 1922. The assessment year concerned is 1958-59; and the accounting period the twelve months ended 31-3-1958. The question referred is :

"Whether having regard to the language of Rule 2 of the Income-tax Rules the assessee is entitled to registration under Section 26A."

2. The assessee is a firm consisting of three partners with equal shares. The instrument of partnership is dated 5-4-1957.

3. The assessee applied for registration under Section 26-A of the Indian Income-tax Act, 1922, for the assessment year 1958-59 on 31-3-1958. On the same day the assessee also applied for the registration of the firm under Section 58(1) of the Indian Partnership Act, 1932.

4. According to Section 58(1) the registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating :

- (a) the firm name,
- (b) the place or principal place of business of the firm,
- (c) the names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm,

and signed by all the partners, or by their agents specially authorised in that behalf. The statement delivered by the assessee on 31-3-1958 was returned on the ground that it was not duly stamped and for lack of some of the particulars prescribed.

5. Section 59 of the Indian Partnership Act, 1932, provides that when the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. No entry was made in the Register of Firms during the previous year with which we are concerned. It was made only on 15-11-1958.

6. The relevant portion of rule 2 of the Indian Income-tax Rules, 1922, provides that 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, register with the Income-tax Officer, the particulars contained in the said Instrument on application made in that behalf and that such application shall be made where the firm is registered under the Indian Partnership Act, 1932, before the end of the previous year of the firm. It is common ground that if the firm cannot be considered as having been registered under the Indian Partnership Act, 1932, on 31-3-1958 when the statement was delivered to the Registrar, the question referred has to be answered in the negative and against the assessee. The statement filed on that day was returned by the Registrar on the ground that it was not in order and we cannot but hold that there was no registration under the Indian Partnership Act, 1932, before the end of the previous year 1957-58.

7. In *(Firm) Ram Prasad-Thakur Prasad v. (Firm) Kamta Prasad, Sita Ram*<sup>1</sup>, it was contended that registration is effected as soon as there has been a compliance with the provisions of Section 58 of the Indian Partnership Act, 1932. Kendall, J., repelled the argument and said :

"If Section 58 stood alone, this argument might have some force, but Section 59 shows that registration amounts to more than what is said in Section 58. The Registrar, under Section 59, must be satisfied that the provisions of Section 58 have been duly complied with, and he must record an entry of the statement in his register."

This decision was followed in *Bank of Koothattukulam v. Itten Thomas*<sup>2</sup>, wherein the Court said that reading Sections 58 and 59 together a firm cannot be said to be registered when the statement prescribed by Section 58 and the required fee are sent to the Registrar and that the registration of the firm is effected only when the entry of the statement is recorded in the Register of Firms and the statement is filed by the Registrar as provided in Section 59.

8. There is a Limited Partnerships Act in England. It is an Act of 1907. Section 8 of that Act provides that the registration of a limited partnership shall be effected by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the limited partnership is situated or proposed to be situated a statement signed by the partners containing the particulars specified therein, and Section 13 that on receiving any statement made in pursuance of that Act the registrar shall cause the same to be filed, and shall send by post to the firm from whom such statement shall have been received a certificate of

<sup>1</sup> AIR 1935 All 898

<sup>2</sup> AIR 1955 Trav Coc 155

the registration thereof. Lindley in dealing with these provisions says :

"It is apprehended that registration is complete as soon as the prescribed statement has reached the registrar; and that the filing of the statement and issue of the certificate are ministerial acts the omission of which would not deprive a limited partnership of the benefit of the Act."

Lindley on Partnership, 14th Edition, Page 812.

9. It is unnecessary to evaluate this line of reasoning. We are not dealing with a case where Section 58 has been complied with and only Section 59 has not been satisfied. We are dealing with a case where the statement delivered has been returned by the Registrar and Section 58 itself does not come into operation.

10. Section 58 of the Indian Partnership Act, 1932, came up for consideration in Girdhari Lal v Spedding Dinga Singh and Co., AIR 1954 Himachal Pradesh 52. The Court said :

"The satisfaction of the Registrar as to the due compliance with the provisions of Section 58 is not subject to appeal or suit. He is therefore the sole authority with regard to that satisfaction. That being so, provided he acts 'bona fide' and follows the prescribed procedure, his satisfaction on the said point is not open to question in a Court of law."

There is no allegation of mala fides or that the Registrar has not followed the prescribed procedure.

11. It must follow that there was no registration of the firm under the Indian Partnership Act, 1932, during the previous year 1957-58 and that the question referred has to be answered in the negative and against the assessee. We do so; but without any order as to costs.

12. A copy of this Judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by Sub-Section (5) of Section 66 of the Indian Income-tax Act, 1922.

Order accordingly.