

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Raghavji Anandji

(J Vimadalal, C.J. S.K. Desai, J.)

22.11.1973

JUDGMENT

S.K. Desai, J.

1. This is a reference made by the Income-tax Appellate Tribunal, Bombay Bench "B", under section 66(1) of the Indian Income-tax Act, 1922.
2. The assessee is Messrs. Raghavji Anandji & Co. We are concerned with the assessment year 1959-60, the corresponding previous year being S. Y. 2014.
3. Messrs. Raghavji Anandji & Co. is, as per the statement of the case, an old business, but it is not necessary to refer to its history earlier than 10th December, 1945. Prior to that date it consisted of nine partner, viz., Karsondas Mulji Purshottam Mulji, Haridas Mulji, Ratansey Lalji, Naranji Vallabhdas, Narottam Vallabhdas, Virji Vallabhdas, Nensey Goculdas and Bhagwandas Mathuradas. From that date one Vandravan Purshottam joined as a partner. Thereafter, there were changes in the constitution of the firm by partnership deeds dated 20th March 1950, and 27th February 1952, but they are not relevant for purpose of this reference. On 19th February, 1954, Vandravan PUrshottam was allowed to join the firm as a partner not only in his individual capacity but also as a karta of a Hindu undivided family, and the same position continued till the end of the accounting period in question, although there were other changes in the constitution of the firm by partnership deeds dated 21st March, 1958, and 5th March, 1959. THE firm so constituted was registered for all these years including the year under reference. The Income-tax Officer, before whom the claim for registration of the firm for the assessment year 1959-60 was made, allowed registration under section 26A of the Act on the basis of the partnership deed dated 21st March, 1958. The Commissioner of Income-tax, Bombay City II, however, after issuing notice under section 33B of the Act, cancelled the registration of the firm and directed the Income-tax Officer to make assessments taking the status as that of an association of persons. This order of the Commissioner of Income-tax under section 33B(1) of the Act is annexed to the

paper book as annexure "D" to the statement of the case. There was thereafter an appeal to the Income-tax Appellate Tribunal and the Tribunal by its order dated 18th May, 1962, set aside the order of the Commissioner, with the result that the original order of the Income-tax Officer granting registration has remained effective. It appears that, thereafter, the Commissioner of Income-tax made an application for reference and on the application the following question has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the firm could be registered under section 26A for the assessment year 1959-60 and the cancellation of the registration by the Commissioner of Income-tax was right in law ?"

4. It may be stated here that, according to me, the only reason why the Commissioner acted under section 33B(1) of the Act and cancelled registration of the firm to be found in his order (annexure "D") is the fact that Vandravan Purshottam had signed the deed of partnership in two capacities.

5. It may be further mentioned that, in allowing the appeal, the Tribunal felt itself found by the unreported decision of a Division Bench of this High Court (Chagla C.J. and Tendolkar J.) in Income-tax Reference No. 2 of 1950 (decided on 5th October, 1950). It is submitted by Mr. Hajarnavis, on behalf of the revenue, that this decision could be distinguished as the facts before that Division Bench were distinct and different from the facts in the instant case; alternatively, it was submitted that the legal position is concluded by the decision of the Privy Council in Lachhman Das v. Commissioner of Income-tax, which decision was not cited before the Division Bench of the Bombay High Court above referred to. It was urged that, in view of the decision of the Privy Council, the Commissioner was correct in holding that such a firm was not entitled to registration and, therefore, in cancelling the registration earlier allowed by the Income-tax Officer.

6. It cannot be disputed that a partnership which is not valid in law may be refused registration by the taxing authorities, or, if erroneously registered, the registration may be subsequently cancelled by the Commissioner under his powers under section 33B of the Act. The validity of a partnership would have to be decided with reference to the express provisions of the Indian Partnership Act, and, in a case such as the one before us, with further reference to the principles of Hindu law. If it can be shown that the deed of partnership offends either these statutory provisions or the principles governing the personal law applicable to a Hindu undivided family, then such a partnership undoubtedly cannot be regarded as valid and the order of the Commissioner cancelling the registration must be upheld.

7. It may be mentioned here that the order of the Commissioner dated 19th September, 1961,

proceeded to consider the deed of partnership dated 5th March, 1959. It is clear - and this is the admitted position - that we are really concerned with the earlier partnership deed, dated 21st March, 1958. However, it is agreed position that as far as the question arising before us in this reference concerning Vandravan Purshottam are concerned, the provisions in the two deeds of partnership are identical.

8. The Commissioner for purposes of his order placed reliance on the following three cases :
Hoosen Kasam Dada v. Commissioner of Income-tax, *Lokenath Prasad Dhandhanian v. Commissioner of Income-tax* and *Lachhman Das v. Commissioner of Income-tax*.

9. He also referred to the decision of the Division Bench of this court in Income-tax Reference No. 2 of 1950 earlier referred to. The Commissioner held that, having regard to the observations in the Privy Council case and other decisions, a partnership deed which was signed by the same person in two capacities could not be valid in the eye of the law, and accordingly directed cancellation of the registration. We have to consider whether that is the correct position in law.

10. According to Mr. Hajarnavis, a partnership is a contractual relationship between persons who have agreed to do certain things as provided for under section 4 of the Indian Partnership Act, 1932. According to him, therefore, if there was such an agreement entered into by Vandravan Purshottam in his one capacity with Vandravan Purshottam in his distinct capacity, such agreement was invalid inasmuch as it was tantamount to a person entering into an agreement with himself. But before expressing any opinion on this contention reference may be made to *Rai Bahadur Lokenath Prasad Dhandhanian v. Commissioner of Income-tax* and *Lachhman Das v. Commissioner of Income-tax*, which were the two decision on which reliance was place by the learned counsel for the revenue. In Dhandhanian's case the court was concerned with the firm of Bhudarmal Chandi Prasad in which the only two partners were Lokenath Prasad Dhandhanian in his individual capacity, of the one part, with the undivided Hindu family (comprising himself and his two sons, Badri Bishal and Kishori Lal) of which he was the karta, of the other part. The two executants to the deed of partnership dated 24th February, 1936, which was under consideration, were accordingly Lokenath Prasad (in his individual capacity), with Lokenath Prasad (as karta of the Hindu undivided family). The claim for registration of such a partnership was disallowed by the Income-tax Officer, and the appeal therefrom was rejected by the Assistant Commissioner. This was confirmed by the Patna High Court, the principle judgment being given by Manohar Lal J. After considering the provisions of Hindu law, it was held that the purported partnership was between Lokenath Prasad on the one hand (in his individual capacity), and Lokenath Prasad (as the managing member of the undivided Hindu family) on the other, and accordingly it was invalid. In my view, it would be clearly invalid inasmuch as the plurality of persons necessary to constitute the relationship of partners under section 4 of the Indian Partnership Act, 1932, did not

exist in that case.

11. Very strong reliance was placed by the learned counsel for the revenue on the decision of the Privy Council in Lachhman Das's case. In that case the partnership which was under consideration was one consisting of the undivided Hindu family of one Lachhman Das and his sons of the one part (one of the sons being one Daulat Ram) and Daulatram in his individual capacity of the other part. It was observed that it is well-settled that a stranger could enter into a partnership with a Hindu undivided family acting through its karta, and the Privy Council felt that it was not possible to distinguish the case of a stranger from that of a coparcener who puts into the partnership what was admittedly his separate property held in his individual capacity and unconnected with family funds. Accordingly, it was held :

"..... it is clear that if a stranger can enter into partnership, with reference to his own property, with a joint Hindu family through its karta, there is no sound reason in their Lordships' view to withhold sold opportunity from a coparcener in respect of his separate and individual property."

12. Mr. Hajarnavis, however, relied upon the observations at pages 51 and 42 of the report where the Privy Council consider and dealt with Dhandhanian's case and the emphasised and following observations in the judgment :

"On the respondent's behalf, their Lordships' attention was invited to a case, *Lokenath Prasad Dhandhanian v. Commissioner of Income-tax*, but the facts of that case are clearly distinguishable. The partnership there (as the judgment of the High Court in that case states) was formed between the same individual acting, on the one, hand, as the karta of the joint Hindu family and, on the other, as a partner in his individual capacity. He came to occupy, in the same transaction, two different capacities : one as representing the interest of the family and the other as representing his private interest. These two capacities might in certain conceivable circumstances be in conflict. The partnership in that case was, therefore, rightly disallowed."

13. Accordingly to the submission of Mr. Hajarnavis, this was clear authority for the proposition that there could not be a valid contract of partnership between Vandravan Purshottam in one capacity and Vandravan Purshottam in another, and that this was a good ground on which registration was cancelled by the Commissioner. In my view there can be two answers to the submissions made by Mr. Hajarnavis. In the first place, it is possible to regard the agreement of partnership placed for our consideration not as a contract between Vandravan Purshottam in one capacity and Vandravan Purshottam in a different capacity, as Mr. Hajarnavis wants us to hold, but between Vandravan Purshottam in his two capacities and nine other persons. Again, it does

not appear to me to be the correct position in law to state that all contracts between a person A, and A and others would be invalid. Reference may be made in this connection to the provisions of section 46 of the Indian Partnership Act, 1932, where a partner may enforce as against the firm of which he is a partner certain contractual rights by means of a suit (without dissolution), whereas other can only be enforced by filing a suit for dissolution of the firm and having accounts taken. A firm is no more than a compendious name or expression indicating the totality of its partners, and such a contract between a partner and the firm would be regarded as invalid.

14. As far as we are concerned, however, the matter is concluded in my opinion by the unreported decision of Chagla C.J. and Tendolkar J. in Income-tax Reference No. 2 of 1950 (decided on 5th October, 1950). The Division Bench was concerned in that reference with the firm of Messrs. C. K. Vora & Co. which prior to 1943 considered of three partner, viz., Nemchand Popatlal, Jagatchandra Nemchand and Dholidas Doongersi. Nemchand died in April, 1943, levying a will in which the residue of his estate was left to his grandson, Bhupendra, and he had appointed his son, Jagatchandra, as his executor. Dholidas Doongersi also died in July, 1945, and on 10th October, 1945, a new deed of partnership was executed and it was sought to be registered under section 26A. The department refused to register it, holding that the partnership deed was not validity executed inasmuch as Jagatchandra had signed the agreement in two capacities, one as representing the joint Hindu family and the other as the executor of the will of Nemchand. The Tribunal took the view that the partnership deed was valid, and this view was confirmed by the Division Bench, Chagla C.J. observing :

"On the question submitted to us the only thing we have to consider is whether there is anything in law which precludes a person signing a partnership deed in two different capacities. Jagatchandra had a seven annas share as representing the joint family. He was also the executor and represented the estate of his father and under the will, as I have stated above, his minor son, Bhupendra, was entitled to seven-annas share of his grandfather; so Jagatchandra signed the partnership deed also as the executor and as representing the estate of his father. It is difficult to understand why one individual cannot execute the partnership deed in two capacities. Indeed, the Advocate-General has not seriously attempted to support his connection of the department....."

15. Mr. Hajarnavis urged that the two capacities under consideration before the said Division Bench were different from the two capacities of Vandravan Purshottam under consideration before us. It is to be remembered, however, that in law an estate vests in the executor and, therefore, the alleged distinction sought to be made by Mr. Hajarnavis is not one that commends itself. In my view, the question that has arisen before us directly arose before the above Division Bench and was declared against the contention of the revenue, the Division Bench holding that

the partnership deed was no invalid by reason of the fact that it was signed by Jagatchandra in two capacities. In that case also, it may be mentioned, there were other persons as partners and, therefore, the objection as to validity earlier indicated at the end of my discussion of Dhandhania's case would not come into play. Mr. Hajarnavis submitted that the Bombay decision was contrary to the excess decision of the Privy Council, which submission I am unable to accept. In my view, the Income-tax Tribunal was correct in the view that it took following the decision in Income-tax Reference No. 2 of 1950, and the revenue must accordingly fail in this reference.

16. It may be mentioned here that Mr. Hajarnavis had, in passing submitted certain other possible objections to the registration of this firm. However, we did not permit him to raise them, since the Commissioner had not cancelled the registration of the firm on the basis of those contentions advanced by Mr. Hajarnavis. The same would also no arise from the order of the Tribunal.

Vimadalal, J.

17. I agree and have nothing to add.

By the court

18. Accordingly, the question referred to us is answered as follows : On the facts and in the circumstances of the case, the firm could be registered under section 26A for the assessment year 1959-60, and the Commissioner of Income-tax was not right in law in cancelling the registration thereof.

19. The Commissioner to pay the costs of this reference to the assessee.

