

PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax

Vs

Laxmi Trading Company

(Kapur, J.)

25.06.1953

JUDGMENT

Kapur, J.

1. This is a reference made by the Appellate Income-tax Tribunal stating the following question for determination of this Court :-

"Whether there could in law be a partnership between a partner in a head-firm and another individual in respect of the partners share in the head-firm so as to entitle the partners in the sub-firm to apply for registration thereof under section 26 A, Income-tax Act, 1922? "

Ram Pershad a wholesale dealer was a partner in the Wholesale Cloth Association, Ludhiana, in his individual capacity. His brother in law, Gopal Das, was in charge of his affairs in the Association and was the employee of the Association on a monthly salary of Rs. 200 On the 1st April, 1947 a deed of partnership was drawn up by which Gopal Das became a partner in the share of Ram Pershad in the Association and this firm was called "Laxmi TRading Company". There was no change in the constitution of the Wholesale Cloth Association as a result of the introduction of Gopal Das. The Laxmi Trading Company applied for the assessment year 1948-49 for registration under Section 26A of the Income-tax Act. The registration was refused by the Income-tax authorities but on appeal to the Appellate Tribunal the firm was directed to be registered under Section 26A and on the application of the Commissioner of Income-tax, the question which I have quoted above has been stated for the opinion of this court. Counsel for the Commissioner of Income-tax has submitted that such a relationship as is created by the deed of the alleged partnership between Ram Pershad and Gopal Das is not a partnership within the meaning of Section 4 of the Partnership Act as Gopal Das cannot act for Ram Pershad which is essential for the purposes of Section 4 of the Partnership Act. He also refers to Section 29 of the Partnership Act which deals with the rights of t transferee of a partners interest. The case in my opinion is covered by what is called a sub-partnership. Ram Pershad and Gopal Das have formed a sub-partnership which is recognised institution and has been described by Lindley on

partnership 1950 Edition at page 69, in the following words :-

"If, therefore, several persons are partners and one of them agrees to share the profits derived by him with a stranger, this agreement does not make the stranger a partner in the original firm. The result of such an agreement is to constitute what is called a sub-partnership, that is to say it makes the parties to it partners inter se : but it in no way affects the other members of the principal firm".

I am, therefore, of the opinion that the Income-tax Appellate Tribunal has rightly directed the registration of the firm under Section 26A and I will answer the question in the affirmative. The Commissioner must pay the costs of the proceedings in the Court. Counsels fee Rs. 250.

FALSHAW, J.-I agree.

Reference answered in the affirmative.