

PUNJAB AND HARYANA HIGH COURT

Padam Parshad Rattan Chand

Vs

Commissioner of Income Tax

(Bhandari, C.J. Falshaw, J.)

03.12.1953

JUDGMENT

Falshaw J.

1. The following question has been referred to us under Section 63(1), Income Tax Act, by the Income Tax Appellate Tribunal (Delhi Bench) :

"Whether a firm which comes into existence by oral agreement, is entitled to be registered under Section 26A, if on the date of the application for registration the terms and conditions of the partnership have been reduced to writing and the application for registration is accompanied by such an Instrument?"

2. The facts are that the assessee firm Messrs. Padam Parshad-Rattan Chand of Delhi started business as from 1-4-1947, and in the course of the assessment for the year 1948-39 relating to the account year ending on 31-3-1948 an application was made for registration of a partnership under Section 26A(1) on the basis of a partnership deed executed by the two partners, Rattan Chand and Padam Parshad and specifying their shares in the partnership, on 10-4-1950. This application was dismissed by the income-tax Officer on 26-5-1950, and an appeal against his order was dismissed by the Appellate Assistant Commissioner who apparently had before him two appeals relating both to the assessment years 1948-49 and 1949-50. The ground of dismissal was that the profits had not been distributed between the partners.

3. A further appeal was made to the Appellate Tribunal which apparently only related to the year 1948-49. This appeal was also dismissed, but on a different ground, namely that according to the deed itself the partnership business had been carried on since 1-4-1941 and therefore the partnership could not be deemed to be constituted under an instrument dated 10-4-1950 within the meaning of Section 26-A. It was also held that such an instrument could certainly not apply to the account year ending in March 1948. The assessee firm thereupon moved the appellate Tribunal under Section 66 (1) with the result that the question set out above has been framed for

our decision.

4. The learned counsel for the respondent has relied on a recent decision of Kapur J. and myself in -- 'Kalsi Mechanical Works, Nandpur v. Commissioner of Income-tax, Simla', AIR 1953 Punj 301 (A), as concluding the matter, but I find that the point involved in that case was somewhat different. The question framed there was:

"Whether a firm which is alleged to have come into existence by a verbal agreement in June, 1944, is entitled to be registered under Section 26A for the purpose of the assessment for 1949-50, where the instrument of partnership was drawn up only in May, 1949, after the expiry of the relevant previous year?"

We held in that case that for the purpose of registration of a firm under Section 26A it is necessary that the firm should be constituted by an instrument of partnership, and such a firm as is constituted under an Instrument of partnership should have been in existence during the accounting period and should not come into existence during the assessment year, and if it was not in existence during the accounting period, it cannot be registered so as to affect the liabilities of the partners for income-tax accruing during the accounting period. We therefore answered the question framed in the negative.

5. From this, it will be soon that all we decided in that case was that an instrument of partnership could not have retrospective effect for the purpose of assessing income-tax, and although the same question arose in the present case, it is clear that the question referred to us is a pure question of law, namely whether when in an instrument of partnership presented for registration under Section 26-A the previous existence of the partnership on the same terms is alleged, the partnership can be said to be constituted under instrument in question. In other words, the question is not what is the effect of the instrument on the assessee's assessment for the particular year 1948-49, but whether the partnership can be registered so as to have effect in future.

6. Section 26-A provides that application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purpose of the Act. I do not think there can be any doubt about the correctness of the view of the Appellate Tribunal expressed in full in its judgment in the appeal -- 'Messrs. Ram Gulam-Madan Lal v. The Income-tax Officer, C-Ward, Delhi', which has been printed in full as part of this case that the words "constituted under an instrument" mean "created or formed by a formal deed", but whether the fact that the partners of a firm who jointly executed such a deed choose to allege therein that they have previously been partners for some time on the same terms as those embodied in the deed debars the firm from registration under Section 26A is another matter. Obviously, as we held in the case referred to above, the deed or instrument cannot possibly have retrospective effect as regards the income-tax assessment of the firm, but I cannot see any objection to the firms being treated as constituted under the instrument

as from the date of the instrument itself. It may be that the partners in these firms act foolishly in alleging the previous existence of the partnership on the same terms in the vain hope of securing retrospective concessions, and in the most literal sense of the words a partnership cannot be said to be constituted under an instrument when admittedly it has been in existence previously.

On the other hand, the intention of the law is clear, that when partners do draw up an agreement by which their shares in the partnership profits are specified, they are entitled to have the partnership registered under the Act, and thus to have the individual shares of the partners assessed for income-tax, and it seems to me to be an unduly harsh interpretation of the law to say that because the partners say they have been partners previously, they should not be entitled to have the partnership registered even when they have embodied its terms in a deed. I am accordingly of the opinion that when a deed or instrument of partnership is presented for registration under Section 26-A, even where the partnership is alleged in the deed to have existed previously on the same terms, this should not be a bar to the registration of the firm, and it should be treated as constituted under the instrument as from the date of the instrument. I would accordingly answer the question framed for our decision in the affirmative, but since the answer to the question can make no difference to the assessment of firm Padam Parshad-Rattan Chand for the year 1948-49 out of which it has arisen, I would order that the parties be left to bear their own costs.

(7) Bhandari C. J.: I Agree.