

PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax

Vs

Sat Ram Gian Chand

(Mahajan, J.)

15 .09.1960

JUDGMENT

Mahajan, J.

1.This is a petition by the department under section 66(2) of the Income-tax Act. We are asked to issue a mandamus to the Income-tax Tribunal, Delhi Bench, requiring it to state the following three questions of law for our opinion :

"(1) Whether the Tribunal was justified in law in accepting the appeal without deciding the other grounds on which the Income-tax Officer and the Appellate Assistant Commissioner of Income-tax had rejected the application for registration ?

(2) Whether the Tribunal has not misunderstood the ground relating to division of profits on which the Income-tax Officer and the Appellate Assistant Commissioner of Income-tax rejected the application for registration ?

(3) Whether there is any material for the finding that the partners decided to estimate the divisible profits which estimate was arrived at and the divisible sum so determined was divided amongst the partners ?" The Income-tax Appellate Tribunal on being moved, in the first instance, for the purpose refused to state these questions on the ground that the only question argued before it was one of fact from which no question of law arose. It was further observed by the Tribunal in this very order that "the other questions mentioned in the application refer to matters which were not argued before the Tribunal or relied upon by the departmental representative while defending the order of the Appellate Assistant Commissioner." The facts out of which this matter has arised may now be stated. For the assessment year 1953-54, the partnership (Messrs. Sat Ram Gian Chand) was constituted by five partners under an instrument of partnership dated April 2, 1952. This firm was registered with the Department under section 26A of the Indian Income-tax Act. On April 1, 1953, a sixth partner, namely, Jhanda Ram, joined the partnership and consequently, a few instrument of partnership was drawn up on September 27, 1953, and an application under

section 26A of the Act was filed on September 29, 1953. This application was refused by the Income-tax Officer on the following grounds :

"(1) As has been observed above, the firm is now constituted by six partners since April 1, 1953. Prior to this L. Jhandaram was not a partner in the business of the firm. As such any of his personal liabilities could not possibly be met by the firm as a whole. On scrutiny of the account books I found that the income-tax which had been levied on five partners individually and on Jhandaram (who was not a partner then) for the assessment year 1953-54, had not been debited to the individual partners accounts but to the joint account of the firm. If the firm were genuine income-tax amounting in all to Rs. 3,247-2-0 levied on the five partners in their individual capacities should have been debited to the personal accounts of the partners separately and not to the joint partnership accounts in lump sum. What is most surprising is the fact that the income-tax amounting to Rs. 1,724-9-0 levied on Jhandaram for the assessment year 1953-54 when he was not a partner in the assessee firm was found debited to one of the joint accounts. This conduct of the assessee clearly shows that the provision in the instrument of partnership regarding division of profits was not acted upon.

(2) According to the revised form of application for registration under section 26A, Part B of the Schedule is not to be completed if the application is made before the close of the previous year. In this case, the application was made before the close of the previous year but Schedule B was duly completed by the assessee. This error of commission was further aggravated by giving wrong particulars in Schedule B of the application under section 26A. share allocation as stipulated in the instrument of partnership dated September 27, 1953, should have been given, if at all, and not that given in the original instrument of partnership dated April 2, 1952. The granting of registration is more of a concession to the assessee than a right vested in him. The Patna High Court in their recent ruling in Khimji Walji & Co. v. Commissioner of Income-tax have held ... If a firm desires to take advantage of this privilege (privilege of registration under section 26A) it must conform strictly to the requirements of section 26A and the rules made under section 59. As the assessee has failed to comply with the requirements of the section and the rules, I do not think it is entitled to registration.

(3) The assessee firm had two accounts with the Imperial Bank, Tohana Branch (Hissar), in the names of Satram and Jhandaram. Almost all the payments received by the firm during the previous year were deposited in either one of these accounts. Both Satram and Jhandaram failed to disclose the constitution of the firm to the bank authorities. If the firm were genuine, the correct constitution of the partnership concern should have been conveyed to the bank authorities.

(4) As has been observed in the introductory paragraph the assessee did not divide the profits as

determined by a recognized system of accountancy but merely divided refund of security of Rs. 16,872 on December 12, 1953, and cash balance of Rs. 12,149 on March 31, 1954. By not dividing the true profits on a specific date, i.e., on March 31, 1954, the assessee has not acted upon the instrument of partnership."

The Appellate Assistant Commissioner of Income-tax to whom an appeal was preferred by the assessee firm rejected the same with the following observations :

"The most important fact that strikes at the root of the appellants claim is that income-tax which is personal liability was not debited or adjusted in the personal accounts of the partners. The shares of the partners are unequal and hence the amount of income-tax liability of each partner was different. To treat the payments made by all the partners as a joint pool of expenses, does definitely suggest that the partnership was, if at all, a very loose partnership in which the shares of the partners even if defined were not kept up in accordance with the terms of the partnership. In view of these two reasons, I am in agreement with the view taken by the Income-tax Officer, namely, that the firm is not eligible for registration."

The other reason referred to was that the cash in hand was divided as profits without taking into account the payments due or the liabilities due from the firm.

On a further appeal to the Income-tax Appellate Tribunal, the assessee firm succeeded in securing an order in its favour. While deciding in favour of the assessee, the Tribunal held as under :

"Registration has in this case been refused on a ground which does not commend itself to us. The partners decided to estimate the divisible profits which estimate was arrived at and the divisible sum so determined was divided amongst the partners in the proportions to which they were entitled to share the profits in terms of the partnership deed. According to the authorities below the division of profits in the mode prescribed above is not a proper division of profits. In our opinion, it is for the partners and for no one else to determine what the divisible profits are going to be. The fact that for the purpose of income-tax assessment certain add-backs are to be made and a different figure is to be arrived at is irrelevant."

The only contention advanced by the learned counsel for the Department is that the firm of which the registration was sought under section 26A of the Act is not a genuine firm. For this contention, he bases himself on two grounds :

(1) that the profits which were divided were not arrived at according to commercial principles; and (2) that the income-tax payable by the partners was debited to the firm's accounts and not to the partners' individual accounts.

so far as the second ground is concerned, it was not agitated before the Tribunal. Before the Tribunal, only the first ground was agitated and the Tribunal was of the view, and rightly so, that this was a matter relating to the internal affairs of the partnership and had not bearing upon the question of its genuineness. It is well settled that only those questions of law can be referred under section 66(2) of the Income-tax Act, which arise out of the order of the Tribunal. It appears to us that from the order of the Tribunal, no question of law at all arises. In this view of the matter, there is not force in this petition. The same fails and is dismissed with costs, which are assessed at Rs. 100.

KHOSLA, C.J. - I agree.

Petition dismissed.