

COMMISSIONER OF INCOME TAX PATIALA

v.

M/S. JAGANNATH PYARELAL

AUGUST 29, 1985

[SABYASACHI MUKHARJI AND RANGANATH MISRA, JJ.]

Indian Income Tax Act, 1922, Section 26A and Rules 2 and 4 of Income Tax Rules 1922 - Registration of firm - Partnership deed not signed by one of the partners - Application for registration made beyond prescribed time - Held, Firm not entitled to registration.

The respondent-firm had 11 partners on 8.10.1956, including Shri Rabinder Kumar who left India for abroad on 29.1.1959 for prosecuting his studies. A fresh partnership deed was executed to that effect on 1.4.1959. The respondent-firm filed an application on 30.9.1959 for registration of the said firm under section 26A of the Indian Income Tax Act 1922. The Tribunal rejected the application on the ground that the firm was not genuine and the application for registration of partnership firm was not in accordance with the rules as Rabinder Kumar had not signed it.

In a reference made under section 66(2) of the Act, the High Court held that the firm was entitled to be registered for two reasons, namely, (i) that another opportunity should have been given to show whether the firm was actually in existence or not; and (ii) that Rabinder Kumar had acquiesced in the constitution of the firm and had accepted the position.

Allowing the appeals,

HELD: 1. (i) The firm was not entitled to registration under section 26A of the Act as it did not fulfil the conditions laid down for its registration. [738 A]

1.(ii) The law enjoins that the deed of partnership must be signed personally by each partner. Furthermore, Rules 2 and 4 of the Income Tax Rules 1922 require that the application for registration must be made within a period of six months of the constitution of the firm or before the end of the "previous year" of the firm whichever is earlier, if the firm was constituted in that previous year. [738 B]

A In the instant case, factually neither the deed of partnership was signed by Rabinder Kumar nor was the application for registration in accordance with the Rules, and these findings of fact were not negatived by the High Court. Therefore the registration of the firm was rightly refused. [737-H, 738 C-D]

B R.C. Mitter & Sons v. Commissioner of Income Tax, Calcutta 36 I.T.R. p. 194 and Rao Bahadur Ravulu Subba Rao & Ors. v. Commissioner of Income Tax, Madras 30 I.T.R. 163 at page 166, relied upon.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 124 of 1974.

C From the Judgment and Order dated 22nd February, 1973 of the Punjab & Haryana High Court in Income Tax Reference No. 7 of 1972.

AND

Civil Appeal Nos. 4122-23 of 1985.

D From the Judgment and Order dated 11th July, 1979 of the Punjab & Haryana High Court in Income Tax Cases Nos. 21 and 22 of 1974.

C.M. Lodha and Miss A. Subhashini for the Appellant.

E P.K. Mukharjee for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave is granted in the above-mentioned two Petitions.

F These appeals by special leave arise out of a decision and judgment of the Punjab & Haryana High Court in respect of the assessment year 1960-61, under Indian Income Tax Act, 1922 holding that the registration of the firm was wrongly refused. A reference was made under section 66(2) of the Indian Income-Tax Act, 1922 to the High Court in respect of the following question:

"Whether on the facts and in the circumstances of the case, the registration of the firm has rightly been refused?"

H Originally there were 10 partners who were members of two

families and a firm came into existence under the instrument dated 27.3.1952, when Padam Kumar was a minor. When he attained majority on 1.10.1956, he opted to continue as a full-fledged partner and a fresh instrument of partnership was executed on 8.10.1956 by 11 partners including Shri Rabinder Kumar. A fresh deed was executed to that effect on 1.4.1959 and an application dated 2.9.1959 for registration of the said firm under section 26-A of the said Act was filed on 30.9.1959. Shri Rabinder Kumar had left Indian for United States of America for prosecuting his studies on 29.1.1959. It was found by the Tribunal that Rabinder Kumar had not signed the application but indeed he was away to U.S.A. from 29.1.1959. This finding was not challenged by the assessee before the High Court. The Tribunal held that the firm was not genuine and the application was not proper as Rabinder Kumar had not signed and the application for registration of partnership was not in accordance with the rules. These findings were not challenged before the High Court. The High Court, however, was of the opinion that another opportunity should have been given to show whether the firm was actually in existence or not. The High Court held that Rabinder Kumar had acquiesced in the firm and had accepted the position and as such the firm was entitled to be registered. The conditions required to be fulfilled have been laid down by this Court in the case of **R.C. Mitter & Sons v. Commissioner of Income Tax, Calcutta** 36 I.T.R. p. 194. This Court held that in

"order that a firm may be entitled to registration under section 26A of the Income-tax Act, the following essential conditions must be satisfied viz. (i) the firm should be constituted under an instrument of partnership, specifying the individual shares of the partners; (ii) an application on behalf of, and signed by, all the partners and containing all the particulars as set out in the Rules must be made; (iii) the application should be made before the assessment of the firm under section 23, for that particular year; (iv) the profits or losses if any of the business relating to the accounting year should have been divided or credited, as the case may be, in accordance with the terms of the instrument; and (v) the partnership must be genuine and must actually have existed in conformity with the terms and conditions of the instrument of partnership, in the accounting year."

As it appears, factually neither the deed of partnership was signed by Rabinder Kumar nor was the application for registration

A in accordance with the rules. Therefore, the firm was not
entitled to registration under s. 26-A of the Indian Income Tax
Act, 1922. The law enjoins that the deed of partnership must be
signed personally by each partner and this position is settled by
the decision of this Court in **Rao Bahadur Ravulu Subba Rao & Ors.**
B **v. Commissioner of Income Tax, Madras** 30 I.T.R. 163 at page
166, Furthermore, Rules 2 and 4 of the Income Tax Rules, 1922
enjoins that the application for registration must be made within
a period of six months of the constitution of the firm or before
the end of the "previous year" of the firm whichever is earlier,
C at the firm was constituted in that previous year. Neither of
these conditions was fulfilled in the facts and circumstances of
the case as found by the Tribunal and these were not negated by
the High Court. In these circumstances, we are of the opinion
that the Tribunal was right in refusing the registration of the
D firm and the High Court was not right in holding otherwise. The
question referred must be answered by saying that the registra-
tion of the firm was rightly refused.

E The appeals are, therefore, allowed and the decision of the
Tribunal is restored. The appellant is entitled to the costs of
these appeals.

M.L.A.

Appeals allowed.