

(1970) 05 AHC CK 0007

Allahabad High Court

Case No: Income-tax Reference No. 563 of 1963

Sita Ram Har Govind

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: May 13, 1970

Acts Referred:

- Income Tax Act, 1922 - Section 26A
- Income Tax Rules, 1922 - Rule 30

Citation: (1971) 79 ITR 575

Hon'ble Judges: T.P. Mukerjee, J; R.S. Pathak, J

Bench: Division Bench

Advocate: R.K. Gulati, for the Appellant; Brij Lal Gupta and R.R. Misra, for the Respondent

Final Decision: Disposed Of

Judgement

Pathak, J.

The assessee was registered u/s 26A of the Indian Income-tax Act, 1922, for the assessment year 1958-59. It applied for renewal of registration on June 29, 1959, for the assessment year 1959-60, the relevant previous year being the period September 29, 1957, to September 17, 1958. The application was rejected by the Income Tax Officer and the assessee was unsuccessful in appeal before the Appellate Assistant Commissioner, and, thereafter, in second appeal, before the Income Tax Appellate Tribunal.

2. The assessee-firm was constituted under a partnership deed dated December 22, 1956, and consisted of 5 partners, Hargovind, Jawahar Mal, Madan Lal, Murlidhar and Ratan Lal, and one Ram Kishore, a minor, was admitted to the benefits of the partnership. Clause 2 of the partnership deed provided that the partnership commenced on November 4, 1956, and Clause 6 of the partnership deed provided that in the case of death or retirement of a partner the firm would not dissolve. One of the partners, Madan Lal, died on August 22, 1958. Thereafter, a partnership deed

dated October 13, 1958, was executed creating a partnership between Hargovind, Jawahar Mal, Murlidhar, Ratan Lal, Jagdish Prasad and Smt. Ayodhya Devi, widow of Madan Lal, and two minors, Ram Kishore, son of Sita Ram, and Lakshmi Narain, son of Madan Lal, were admitted to the benefits of the partnership. Clause 2 of the partnership deed declared that the partnership commenced on September 18, 1958. It will be noticed that this date falls immediately after the close of the account year under consideration. The application for renewal of registration made on June 26, 1959, for assessment year 1959-60 specified the partners as in the partnership deed of December 28, 1956, and was signed by them except that in place of Madan Lal, who had died, it was signed by his widow, Smt. Ayodhya Devi. The Tribunal, in dismissing the second appeal filed by the assessee, took the view that, while there was no doubt that a genuine firm was in existence, the requirements of the law relating to renewal of registration had not been satisfied. It expressed the opinion that the certificate in the statutory form prescribed for the application required the assessee to state that the constitution of the firm and the individual shares of the partners remained unaltered on the date of the application, and, as on that date two minors had been admitted to the benefits of the partnership in the place of Madan Lal their names should have been mentioned in the application. As is evident from the observations of the Tribunal, it considered that the constitution mentioned in the application should have been that under the partnership deed of October 13, 1958, and not under the partnership deed of December 28, 1956.

3. At the instance of the assessee the Tribunal has referred the following two questions :

" 1. Whether, on the facts and in the circumstances of the case, and having particular reference to Clause 6 of the partnership deed made on December 28, 1956 (annexure " B "). the firm is entitled to make an application for renewal of registration for the assessment year 1959-60 on the basis of the deed made on December 28, 1956 (annexure " B ") ?

2. If the answer to the above question is in the negative, whether an application u/s 26A should have been made for original registration and should have been signed by the partners of the firm as it was constituted at the time of making of the application u/s 26A ? "

4. At the outset an objection has been raised on behalf of the revenue. It is urged that the first question referred by the Tribunal does not arise in the case, it not having been disputed anywhere that the firm is entitled to apply for renewal of registration for the assessment year 1959-60. It is said that the real question which arose was that framed by the assessee, the question being whether the Tribunal was right in holding that, on the basis of the application made by the assessee, the assessee was not entitled to renewal of registration for the assessment year 1959-60. Reliance has been placed on the circumstance that the request of the assessee that the question as framed by it should be referred to this court was

rejected by the Tribunal, and on this it is argued that the Tribunal did not refer the question suggested by the assessee but an entirely different question which did not arise at all in the case. In our opinion, the objection is misconceived. The substance of the question referred by the Tribunal embodies the controversy whether the assessee was entitled to renewal of registration for the assessment year 1959-60 on the basis of the deed of December 28, 1956. The language in which the question has been framed by the Tribunal is not happy, but we are unable to hold that the Tribunal merely intended thereby to refer the question whether the assessee was entitled to apply for renewal of registration. The question essentially is whether the assessee should have been granted renewal of registration for the assessment year 1959-60 on the basis of the deed of December 28, 1956, and that is what we understand of the first question referred by the Tribunal to be.

5. On the merits of the case, the first point to be considered is whether the firm constituted under the deed of December 28, 1956, came to an end and was followed by a new firm created by the deed of October 13, 1958, or whether the same firm continued throughout and was merely reconstituted by the deed of October 13, 1958. A comparison of the two deeds persuades us to the former conclusion. In the deed of 1956 the partners were Hargovind, Jawahar Mal, Madan Lal, Murlidhar and Ratan Lal, and the minor, Ram Kishore, was admitted to the benefits of the partnership, while under the deed, of 1958, the firm consisted of Hargovind, Jawahar Mal, Murlidhar, Ratan Lal, Jagdish Prasad and Smt. Ayodhya Devi and the minors, Ram Kishore and Lakshmi Narain, were admitted to the benefits of the partnership. While the shares of Hargovind, Murlidhar and Ratan Lal in the profits were the same in the two firms, the share of Jawahar Mal was reduced from 1/4th of a rupee to 1/8th of a rupee. While the share of Hargovind in the losses continued to be 1/4th of a rupee, the shares of Jawahar Mal, Murlidhar and Ratan Lal were altered from 1/4th, 1/8th and 1/8th of a rupee, respectively, to 1/6th, 1/16th and 1/6th, respectively. It will also be noticed that the new firm included Jagdish Prasad and Smt. Ayodhya Devi, widow of Madan Lal, as two new partners, and Lakshmi Narain, the minor son of Madan Lal, was admitted to the benefits of partnership. It is urged on behalf of the revenue that Smt. Ayodhya Devi and Lakshmi Narain were brought into the firm to succeed the deceased Madan Lal. But an analysis of the shares in the profits and losses of the firm will demonstrate that this was strictly not so. While Madan Lal shared in the profits and losses to the extent of 1/8th of a rupee, Smt. Ayodhya Devi shared in the profits to the extent of 1/16th of a rupee and in the losses to the extent of 1/12th of a rupee and the minor, Lakshmi Narain, was admitted only to the benefits of the partnership. Then, there is no recital in the deed of 1958 to suggest that the previous firm was being continued. On the contrary, the deed recites that the parties "shall carry on business in partnership." and that "the partnership commenced on Bhadaut Sudi Six Sambat Do Hazar Pandrah, corresponding to 18th September, 1958. . ." Moreover, while Clause 4 of the deed of 1956 merely provided that the capital of the partnership would be contributed by

the partners, Clause 4 of the deed of 1958 also declared that interest would be allowed on such capital at six per cent, per annum. As to the division of profits, there was also a difference. Under Clause 5 of the agreement of 1958, the net profits were divisible between the partners after deducting one anna out of the profits for charity, while under Clause 5 of the agreement of 1956, no provision was made for the deduction of any amount out of the profits on account of charity. Another point of difference lay in this that under the deed of 1956, the liabilities of the minor, Ram Kishore, were limited to the extent of the funds invested by him in the firm, while under the deed of 1958 he was not liable in respect of the losses at all.

6. It will, therefore, appear that the structure of the two partnerships was essentially different and it cannot be said that the firm under the deed of 1958 was merely a continuation of the earlier firm. In our opinion, the two firms must be considered as separate and distinct from each other.

7. The firm constituted under the deed of 1956 subsisted during the account year relevant for the assessment year 1959-60, while the firm constituted under the deed of 1958 commenced its existence from the opening day of the account year relevant for the assessment year 1960-61. It is apparent that the application for renewal of registration could have been made only by the firm constituted under the deed of 1956. It was that firm which had earned income during the previous year relevant to the assessment year 1959-60, and which was liable to the tax thereon. The firm constituted under the deed of 1958 was not liable to assessment at all for the assessment year 1959-60 because it was not in existence during the relevant previous year and, therefore, had no income at all during that period. There is also the consideration that the partnership deed, which is relevant for the purposes of registration u/s 26A of the Indian Income Tax Act, is that operative during the account year relevant to the assessment year for which registration is claimed. That view was expressed in a number of cases and finally received the authority of the Supreme Court in [P.R. Chowdhary and S. Gangoli Vs. The State of U.P.](#), . In respect of the assessment year 1959-60 the deed operative during the relevant previous year was the deed of 1956. The firm constituted under that deed was the firm which made the application for renewal of registration, as is evident from the constitution disclosed in that application. It had already been registered earlier for the assessment year 1958-59 and, consequently, applied for renewal of registration for the assessment year 1959-60.

8. The Tribunal refused renewal of registration on the ground that the application did not correctly disclose the constitution of the firm. It was of the view that the constitution disclosed should have been that obtaining on the date of the application. It referred to paragraph 2 of the prescribed form of the application :

" The instrument of partnership/certified copy of the instrument of partnership was registered by the Income Tax Officer for.in the State of.on theof 19.and we hereby certify that the constitution of the firm and the individual

shares of the partners as specified in the instrument of partnership/certified copy of the instrument of partnership so registered on. remain unaltered. "

9. According to the Tribunal, the constitution of the firm and the individual shares of the partners must remain unaltered with reference to the date of the application, and this was not ,so in the present case, because Madan Lal, a partner, had died meanwhile and there were now two minors with a 1/16th share each. In our opinion, the Tribunal has fallen into the error of confusing the two firms as one; The two firms were distinct from each other; indeed one followed the other in point of time. The firm constituted under the deed of 1956 was dissolved and was followed by the firm constituted under the deed of 1958. Moreover, the former firm having been dissolved already before the application was made, it was illogical to expect that its constitution would remain unaltered on the date of the application. The law contemplates an application u/s 26A in respect of those firms also which have been dissolved. That consideration is sufficient to demonstrate that, in construing the words " remain unaltered" in the prescribed form of the application to mean " remain unaltered on the date of the application ", the Tribunal has imposed a construction not warranted in law. It seems to us that the words " remain unaltered " must be read in relation to the previous year relevant to the assessment year for which registration, or renewal of registration, is claimed. It is with reference to the income of that previous year that a firm seeks the benefit of Section 26A and, accordingly, the requirements of paragraph 2 of the prescribed form of the application should be so construed.

10. Before concluding, we may, with advantage, refer to the observations of the Bombay High Court in [Bhausa Ganusa Pawar and Co. Vs. Commissioner of Income Tax, Poona,](#)

"..... the present case is really one of a dissolution of a firm and the formation of a new firm. The mere circumstance that the business has continued without interruption and the new firm has come into existence from the moment of the death of the deceased partner of the old firm is not sufficient to hold that there has been a mere change in the constitution of the old firm. The legal effect of the death of the partner of the old firm was its dissolution and the firm thereafter constituted is a new firm. Now the firm, which existed during the year of account, was the old firm and registration of the said firm was necessary to be applied for. The said old firm had been granted registration in prior years up to the present assessment year. The proper procedure, therefore, was to ask for the renewal of the registration of the old firm in which case the provisions of Rule 6 had to be complied with or, even if a fresh registration was to be applied for it had to be of that firm. "

11. We respectfully adopt these observations in the present case with the only difference that it might conceivably be said here that, by reason of paragraph 6 of the deed of 1956, the firm did not dissolve on the death of Madan Lal but was dissolved by the surviving partners at will under paragraph 2 of the deed.

12. Upon the aforesaid considerations we are of opinion that the first question referred by the Tribunal must be answered in the affirmative. In that event no answer is called for to the second question.

13. The assessee is entitled to its costs, which we assess at Rs. 200. Counsel's fee is also assessed at the same figure.