

(2004) 08 AHC CK 0292

Allahabad High Court

Case No: Income-tax Reference No. 95 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Oriental Tin Printing Works

RESPONDENT

Date of Decision: Aug. 5, 2004**Citation:** (2005) 273 ITR 240**Hon'ble Judges:** R.K. Agarwal, J; K.N. Ojha, J**Bench:** Division Bench**Advocate:** Shambhoo Chopra, for the Appellant; None appeared, for the Respondent**Final Decision:** Dismissed

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following question of law u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the assessee was entitled to registration under the Income Tax Act, 1961?"

2. The present reference relates to the assessment year 1968-69. Assessment was originally completed on the assessee-firm granting it continuation of registration in terms of Section 184(7) of the Act. (The relevant accounting year had ended on November 1, 1967). It was noticed that the assessee had filed an application in Form No. 11 on March 19, 1968, and a copy of partnership deed dated June 8, 1968, and June 23, 1968. From the facts on record, it was gathered that Ashok Kumar, a minor who had been admitted to the benefits of partnership in the firm, had attained majority on April 8, 1967. The date fell in the relevant previous year. Since the firm had not executed a fresh partnership deed in the previous year, the Commissioner of Income Tax, following the decision of this court in [GANESH LAL LAXMI NARAIN Vs. COMMISSIONER OF Income Tax \[1968\] 68 ITR 969 \(ALL\) TREATED AS OVERRULED BY THE FULL BENCH DECISION IN BADRI NARAIN KASHI PRASAD v. ADDL.](#)

[COMMISSIONER OF Income Tax \[1978\] 115 ITR 858 \(ALL\) : SEE COMMISSIONER OF Income Tax v. BAJAJ and CO. \[1983\] 143 ITR 218 \(ALL\).](#), u/s 263 of the Act can be cancelled the assessment made by the Income Tax Officer u/s 143(3) wherein the assessee has been treated as a registered firm and directed the Income Tax Officer to reframe the assessment by considering the application for registration on the merits.

3. The Income Tax Officer made a fresh assessment by treating the assessee-firm as unregistered. In appeal, before the Appellate Assistant Commissioner, the assessee contended that the minor was also a partner but this was not accepted by the Appellate Assistant Commissioner. It was then argued that the partner's assessments not having been set aside and they having already been assessed on the basis of the original assessment of the assessee-firm, the firm could not again be assessed by treating it as unregistered. This was accepted by the Appellate Assistant Commissioner. The Department filed an appeal to the Tribunal.

4. The Tribunal found that the decision relied upon by the Commissioner for taking action u/s 263 had since been overruled by the Allahabad High Court itself vide its Full Bench decision in the case of [BADRI NARAIN KASHI PRASAD Vs. ADDL. COMMISSIONER OF INCOME TAX. FANCY STORES v. COMMISSIONER OF INCOME TAX. R. C. GUPTA and SONS v. COMMISSIONER OF INCOME TAX. BENI PD. SIDGOPAL v. COMMISSIONER OF INCOME TAX.](#), i.e., the position in law stated there was that a fresh deed was not necessary on the minor attaining majority. According to the Tribunal, in view of the above change in law the assessee was entitled to registration. It, therefore, directed that the assessee-firm be treated as a registered firm in the assessment to be framed afresh u/s 143. In this view it dismissed the Department appeal.

5. We have heard Sri Shambhoo Chopra, learned standing counsel for the Revenue. Nobody has put in appearance on behalf of the respondents -assessee in spite of affidavit of service having been filed.

6. Learned counsel for the Revenue submitted that as the minor Ashok Kumar, who had attained majority on April 8, 1967, and even if elected to continue as a partner, a fresh partnership deed ought to have been executed which having not been done, the firm was not entitled for registration. It may be mentioned here that even though the Tribunal had noted all the facts that the basis of taking action u/s 263 of the Act by the Commissioner, i.e., the decision of this court in the case of [GANESH LAL LAXMI NARAIN Vs. COMMISSIONER OF Income Tax \[1968\] 68 ITR 969 \(ALL\) TREATED AS OVERRULED BY THE FULL BENCH DECISION IN BADRI NARAIN KASHI PRASAD v. ADDL. COMMISSIONER OF Income Tax \[1978\] 115 ITR 858 \(ALL\) : SEE COMMISSIONER OF Income Tax v. BAJAJ and CO. \[1983\] 143 ITR 218 \(ALL\).](#), has been overruled by the Full Bench of this court in the case of [BADRI NARAIN KASHI PRASAD Vs. ADDL. COMMISSIONER OF INCOME TAX. FANCY STORES v. COMMISSIONER OF INCOME TAX. R. C. GUPTA and SONS v. COMMISSIONER OF INCOME TAX. BENI PD. SIDGOPAL v. COMMISSIONER OF INCOME TAX.](#), and therefore, there was no need

for a fresh deed on the minor attaining majority. We, however, find that the hon"ble Supreme Court in the case of [M/s. Progressive Financers Vs. Commissioner of Income Tax, Madras](#), had held that (head note): "the Assessing Officer cannot reject an application for registration of a firm merely because, in the deed of partnership, the shares of the partners are not expressly specified. The Assessing Officer will have to construe the instrument of partnership as a whole, and if reasonably the shares of the partners in profits and losses can be ascertained, accept it as genuine for the purpose of registration. Even if the shares of the partners were not expressly specified in the instrument of partnership but they could be ascertained by the Income Tax Officer from the application and the required information supplied therewith, then the requirements of the law could be said to have been satisfied".

7. Thus the application for registration of a firm cannot be rejected merely on the ground that if a minor who becomes major during the particular assessment year and if he elects to continue as a partner a fresh partnership is required. This view taken by the Tribunal does not suffer from any illegality.

8. In view of the foregoing discussion, we answer the question of law in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.