(1961) 08 KL CK 0034

High Court Of Kerala

Case No: Income-tax Referered Case No. 25 of 1959

ST. JOSEPHS PROVISIONS STORES		APPELLANT
	Vs	
COMMISSIONER OF Income Tax, KERALA.		RESPONDENT

Date of Decision: Aug. 16, 1961

Acts Referred:

- Income Tax Act, 1961 - Section 26A

Citation: (1962) 45 ITR 380 : (1961) 5 KLJ 1021

Hon'ble Judges: Ansari, C.J

Bench: Division Bench

Judgement

ANSARI C.J. - The assessee is a firm consisting of eight partners, which was constituted under the instrument of September 10, 1953, and the profit for the year ending March 31, 1957, amounted to Rs. 49,129. But on April 10, 1957, the following resolution was passed :

"Due to the delay in getting the amount due from the customers it is found that financially the business suffers and as such the profits of the period as disclosed in the profit and loss account need not be divided and credited in the accounts of the partners and the same be kept as a reserve."

The individual accounts of the partners were accordingly not credited with their shares of the profit in the aforesaid year, and the amount was credited to the reserve account on April 10, 1957, at the same time narrating the share of each partner therein, which corresponds with the partners profit-sharing ratio under the deed of partnership. The firm applied for registration for the assessment year 1957-58, whose previous year would end on March 31, 1957, and the application was on July 20, 1957. It was accompanied by the forms required under rule 6 of the Income Tax Rules; but the Income Tax Officer rejected that application on two

grounds. One was that it was beyond the period of limitation and sufficient reasons had not been shown to condone the delay, and the next was that the profits had not been divided and credited in order to justify registration. The Appellate Commissioner held that sufficient reasons for condoning the delay had been established, but held that the application one for the renewal of the registration and rule 6 having required a certificate by the partners about the profit of the previous year having been divided or credited, the application for registration had been properly rejected, because of the absence of division of profits among the partners and of the shares of the profit in the accounts of each partner. The Appellate Tribunal has disallowed the appeal on the ground of there having been neither division nor crediting of profits in pursuance of the resolution passed on April 10, 1957, and, therefore, the requirement of rule 6 not having been complied with.

The Tribunal has, u/s 66(1) of the Income Tax Act, referred the following question to this court :

"Whether the registration of the firm is renewable for the assessment year 1957-58 u/s 26A and the rules made thereunder ?"

It is obvious that both the Appellate Assistant Commissioner and Appellate Tribunal have erred by unnecessarily insisting on formality being observed, and the words "previous year were divided or credited" in the form attached to rule 6 of the Income Tax Rules, 1922, do not require profit having been actually credited in the accounts of each partner of the firm with the result that, should the profit be credited to the partner elsewhere, that would be sufficient compliance with the form attached to rule 6. We also think those words indicate the ownership in the profits ceasing to be joint and the shares of each partner having become separated rather than each partner being required immediate use of the profits. The Tribunal would concede that, had the accounts of the partners shown the profits having been credited, the resolution would not be fatal to the firm being registered. Therefore, immediate user is not required, and the position is not different where the profits of the year have been taken to the reserve account, after the shares of the partners in the aforesaid amount are shown. In substance, each partner is treated in this reference as having brought to the reserve fund his share of the profit, and we do not see why the severance and fixation of the shares should further be emphasised by the several entries being made in the respective accounts of each partner. The absence of such entries is explainable on the ground that the partners would then become entitled to draw upon the profit and getting immediate benefit in the profits of the firm is not the requirement for obtaining registration under rule 6. We, therefore, feel that the absence of entries in the separate accounts of each partner is not fatal, and the requirement of rule 6 is met where the profit is taken into the reserve fund by showing the partners shares therein and indicating what is the contribution of each partner to the reserve fund. Indeed, there is the observation in Chhotalal Devchand v. Commissioner of Income Tax that should the partners shares

be given and something further remains to be worked out arithmetically, that would not be prejudicial to the application for registration, and we would respectfully agree with it. There Chagla C.J. has observed :

"Now in the application for registration the shares of the partners are set out; but what is urged against the assessee is that in its books of account it has credited the profits to the firm name and not to the name of each constituent of the firm. Now if the shares of the partners are known - and for the purpose of this argument we will assume that the shares are known - then it is merely a matter of arithmetical computation."

Applying the principle to the reference before us, the shares of the partners for the previous year had been ascertained, though credited in the reserve account, and the failure to make entries in each partners account in the firm would be mere absence of arithmetical additions, which, in our opinion, would not be fatal to the application.

The learned Government pleader has argued that the profit of the year was added to the profits of the next year and divided in 1958, with the result that there was no division and crediting in the earlier year. But the application for registration should be decided on facts as they stood on the date the application was made, and not what happens subsequently. Therefore, the later division of the profit would not be fatal to the earlier application, should that be justified by the entries in the account at the time the application be made. In any case, we are convinced that with ascertainment of the partners shares in the profit, though it be in the reserve fund, the requirement of the profit being divided and credited is met, and, therefore, the answer to the question before us is in the affirmative. We accordingly direct the aforesaid answer to be sent to the Tribunal, and the assessee will be entitled to his costs, advocates fee being Rs. 100.

Question answered in the affirmative.