

(1982) 10 MP CK 0004

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 63 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Ghanshyam General Stores

RESPONDENT

Date of Decision: Oct. 19, 1982

Acts Referred:

- Income Tax Act, 1961 - Section 184(7), 263

Citation: (1984) 147 ITR 110

Hon'ble Judges: R.K. Vijayvargiya, J; G.G. Sohani, J

Bench: Division Bench

Advocate: R.C. Mukati, for the Appellant; J.W. Mahajan, for the Respondent

Judgement

Sohani, J.

By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessment order dated August 8, 1977, granting continuation of registration for the A.Y. 1977-78 was not erroneous or prejudicial to the interest of the Revenue attracting the provisions of Section 263 of the Act?"

2. The material facts giving rise to this reference, as set out in the statement of the case, briefly are as follows:

3. The assessee is a partnership firm. By a deed of partnership dated 2nd January, 1972, the assessee-firm was constituted consisting of five partners and two minors, Shri Purandas and Shri Premchand, who were admitted to the benefits of the partnership. The assessee-firm was granted registration u/s 185 of the Act for the first time in the assessment year 1973-74. Continuation of registration was allowed up to the assessment year 1977-78. The Commissioner noticed that as Purandas had

attained majority on 3rd February, 1976, after the expiry of the period of six months thereafter, a change in the constitution of the firm took place with effect from 3rd August, 1976, but as no new partnership deed was drawn up nor had the firm applied for registration u/s 184(8) in Form No. 11A but had instead submitted a declaration u/s 184(7) of the Act in Form No. 12 showing that there was no change in the constitution, the ITO erred in not taking into account the change in the constitution of the firm. Therefore, the Commissioner was of the opinion that the action of the ITO in allowing continuation of registration to the assessee-firm was prejudicial to the interest of the Revenue. The Commissioner, thereupon, u/s 263(2) of the Act, issued notice to the assessee to show cause. The assessee raised various objections but these objections were overruled. The Commissioner noted that the partnership deed made no provision for the event when any of the minors would become a major. The Commissioner, therefore, set aside the order of the ITO passed on August 8, 1977, granting continuation of registration for the assessment year 1977-78 and directed the ITO to make necessary enquiries and pass orders afresh granting or refusing continuation of registration of the firm for the assessment year 1977-78, after giving an opportunity to the assessee. Aggrieved by this order, the assessee preferred an appeal before the Tribunal. The Tribunal, relying upon a circular of the Board, held that where a genuine firm had come into existence, registration should not be denied, simply because the minor, who was admitted to the benefits of the partnership, had become a full-fledged partner on attaining majority. In this view of the matter, the Tribunal set aside the order passed by the Commissioner and restored that passed by the ITO. Hence, at the instance of the Department, the Tribunal has referred the aforesaid question of law to this court for its opinion.

4. Sub-section (7) of Section 184 of the Act provides for continuation of registration for subsequent years. That provision reads as under :

"184. (7) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year :

Provided that-

(i) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; and

(ii) the firm furnishes, before the expiry of the time allowed under Sub-section (1) or Sub-section (2) of Section 139 (whether fixed originally or on extension) for furnishing the return of income for such subsequent assessment year, a declaration to that effect, in the prescribed form and verified in the prescribed manner, so, however, that where the Income Tax Officer is satisfied that the firm was prevented by sufficient cause from furnishing the declaration within the time so allowed, he may allow the firm to furnish the declaration at any time before the assessment is

made".

5. In [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.](#), the Full Bench of the Allahabad High Court held that where a minor admitted to the benefits of a partnership attains majority and elects to be a partner of the firm, there is no change in the constitution of the firm but there is a change in the shares of the partners and in case the original instrument of partnership evidences this change, the firm is entitled to continuation of registration u/s 184(7) of the Act. In the instant case, the Commissioner has found that the partnership deed has made no provision for the event when the minor admitted to the benefits of partnership would become a major. A Division Bench of this court in such a situation has held as follows in [Durgaprasad Rajaram Adatiya Vs. Commissioner of Income Tax](#) :

"The mode in which the losses were to be distributed after each minor became a major is thus neither foreseen by the instrument of partnership nor can it be ascertained by applying Section 30(7)(b) or Section 13(b) of the Partnership Act. In such a situation, it is clear that when each minor became major there was a change in the shares as evidenced by the instrument of partnership within the meaning of the first proviso to Section 184(7). The facts of the instant case are similar to the facts of ITR No. 637 of 1972, which was one of the references decided by the Full Bench of the Allahabad High Court in [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 it was held that the instrument of partnership did not evidence the change in shares where one of the minors attained majority. In our opinion, the Tribunal was right in holding that when Prakashchandra and Subhashchandra became majors and thus partners in the firm, there was a change in the shares of the partners as evidenced by the instrument of partnership within the meaning of proviso (1) to Section 184(7) and the assessee was not entitled to continuation of registration."

6. We respectfully agree with the aforesaid observations. It was urged that an erroneous order granting continuation of registration would not be prejudicial to the interest of the Revenue and that the Commissioner had no jurisdiction to take any action u/s 263 of the Act. But the question of jurisdiction of the Commissioner was not raised before the Tribunal. We, therefore, refrain from expressing any opinion in that behalf.

7. Therefore, our answer to the question referred to this court is in the negative and against the assessee. Parties shall bear their own costs of this reference.