

(1996) 04 MP CK 0033

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 333 of 1992

Commissioner of Income Tax

APPELLANT

Vs

Durga Prasad Rajaram Adatiya

RESPONDENT

Date of Decision: April 23, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 184(7), 185
- Partnership Act, 1932 - Section 30

Citation: (1997) 224 ITR 268 : (1997) 90 TAXMAN 357

Hon'ble Judges: A.K. Mathur, C.J; S.K. Kulshreshtha, J

Bench: Division Bench

Advocate: Abhay Sapre, for the Appellant; B.L. Nema, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961; at the instance of the Revenue and the following questions of law have been referred by the Tribunal for answer of this court :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the original deed dated November 14, 1955, together with the endorsement dated September 10, 1961, will constitute an instrument of partnership for purpose of registration ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that there was no change in the constitution of the firm and the assessee was entitled to continuation of registration of the firm for the assessment year 1962-63 ?"

2. The brief facts giving rise to this reference are thus : Under a deed of partnership dated November 14, 1955, the assessee-firm was constituted with the following three partners, namely :

	Share in	in
	profit	loss
1. Rajaram Adatia	0-2-3 3/7th	054
2. Hiralal Adatia	0-2-3 3/7th	0-5-4
3. Hanuman Prasad Adatia	0-2-3 3/7th	0-5-4
	0-6-10 2/7th	0164

3. The above partners also agreed to admit the following minor persons to the benefits of the partnership and to allow the shares in profits only to them in the ratio noted against their names :

1. Ramachandra 0-2-3 3/7th
2. Awadhbihari 0-2-3 3/7th
3. Prakashchandra 0-2-3 3/7th
4. Subhash Chandra 0-2-3 3/7th

4. The firm was allowed registration and renewal of registration from the assessment year 1957-58 to 1961-62. Ramachandra, minor, attained majority on March 15, 1961, and he is stated to have opted to continue as a partner in the firm for the assessment year under consideration. The assessee-firm sought renewal of registration by filing application in Form No. 11, dated June 29, 1962, wherein it had been, inter alia, stated that Ramachandra would have 1/4th share in the firm in the event of losses. Before the Income Tax Officer, it was urged that there had been no change in the constitution of the firm as is specified in the instrument of partnership but the Income Tax Officer rejected such contention. It is further alleged that Ramachandra was to have 1/4th share in the losses of the firm with effect from the date of his attaining majority had wrongly been stated and should be ignored. The Income Tax Officer, however, took the view that there had been a change in the constitution of the firm but such change with the specification of the shares of the partners in the profits and losses of the firm was not evidenced by any document of partnership. Therefore, he refused registration to the assessee-firm and on appeal, the order of the Income Tax Officer was upheld by the Appellate Assistant Commissioner.

5. Aggrieved against the order of the Appellate Assistant Commissioner, the matter was taken up before the Tribunal in second appeal and the Tribunal restored the matter back to the Appellate Assistant Commissioner for a fresh decision. The Appellate Assistant Commissioner considered the matter afresh and confirmed the action of the Income Tax Officer of refusing registration to the firm. The assessee again preferred an appeal to the Appellate Tribunal and the Appellate Tribunal took the view that on the original deed of partnership, Ramachandra, on attaining majority, had made an endorsement assenting to the terms of the agreement therein, wherein he had accepted his share in the profits at 2 annas 3 pies and no share in loss. However, the Tribunal did not agree with the Appellate Assistant Commissioner and took the view that the endorsement made by Ramachandra on the partnership deed should be sufficient to constitute a fresh partnership and it was observed by the Tribunal that though in the application in Form No. 11, the 1/4th share of Ramachandra had not been mentioned, that was a mistake that could be rectified by the assessee. The Tribunal directed the Income Tax Officer to allow an opportunity to the assessee to rectify the said mistake in Form No. 11 and on such rectification, the firm may be allowed continuation of its registration. Then, in these circumstances, the Revenue moved an application before the Tribunal for sending a reference to this court and the aforesaid two questions of law have been referred by the Tribunal for answer of this court.

6. We have heard learned counsel for the parties and perused the records. In fact, the assessee moved two applications, one in Form No. 12 for seeking continuation of registration of the firm and the second in Form No. 11 for grant of a fresh registration. So far as the application for grant of continuation of registration is concerned, it was rejected and so far as the grant of a fresh registration is concerned, the application in Form No. 11 was found to be belated by the Income Tax Officer and the Income Tax Officer observed that it was barred by time and thus, incompetent. The Appellate Assistant Commissioner affirmed it and ultimately the matter reached again before the Tribunal. It appears that the Tribunal has not properly expressed itself in the operative portion of the paragraph which is just demonstrated. In fact, the matter which was argued before the Tribunal, was regarding grant of fresh registration on attainment of majority by Ramachandra and Ramachandra on attaining majority had made the endorsement on the partnership deed that he may be inducted into the partnership with the share of 2 annas 3 pies and he had accepted the other terms and conditions. But, of course, in the application Form No. 11 which was filed, he did not fill the loss which he agreed to share and which should have been given in the schedule in Form No. 11. It is also apparent that the Tribunal has not addressed itself to the question that the application in Form No. 11 for grant of fresh registration was belated and whether the Tribunal has condoned the delay or not. Be that as it may, this question is not before us and we proceed on the assumption that the Tribunal has condoned the delay while granting relief to the assessee by directing rectification of Form No. 11.

As a matter of fact u/s 30(5) of the Partnership Act, when the minor attains majority, within six months, the minor may give public notice that he has elected to become or not to become a partner in the firm and such a notice shall determine his status in the firm and as per the proviso, if he fails to give such a notice, he shall become a partner in the firm on the expiry of the period of six months from the date of attaining majority. But, in the present case, he has made the endorsement on September 10, 1961, showing him to be inducted as a partner of the firm. Therefore, on the date he made the endorsement and elected to be inducted as a partner of the firm, the firm had come into existence and there was no impediment in granting registration to the firm. Therefore, the firm has come into existence from the date, i.e., September 10, 1961, when Ramachandra who was minor on attaining majority, elected within six months to be inducted as a partner in the firm. Now, the question is whether this firm has registration or not. As pointed out earlier, the application moved by the assessee in Form No. 11 was belated but this aspect has not been adverted to by the Tribunal. Therefore, it is presumed that by mistake the Tribunal has condoned the delay. Now, on the basis of this, the firm can be granted registration. Though the Tribunal has observed in the last paragraph that the Income Tax Officer shall allow opportunity to the assessee to rectify the mistake in Form No. 11, it is not a case of grant of continuation. This will be a grant of fresh registration u/s 185 and not continuation of registration u/s 184(7). Therefore, in this view of the matter, we hold that the Income Tax Officer may grant fresh registration to the assessee-firm on rectification of Form No. 11 as directed by the Tribunal.

7. Shri Abhay Sapre, learned counsel for the Revenue, has invited our attention to the decisions of this court given in [Commissioner of Income Tax Vs. Durgaprasad Rajaram Adatiya](#), and [Commissioner of Income Tax Vs. Ghanshyam General Stores](#), . Suffice it to say that both the cases do not support the contention of learned counsel for the Revenue as they relate to the grant of continuation of registration and not to the question regarding registration of the partnership-firm. Therefore, this will be a grant of fresh registration u/s 185 and not continuance of registration u/s 184(7) of the Act. Accordingly, we answer the first question in favour of the assessee with the modification as mentioned above that the endorsement constitutes a fresh partnership for the purpose of registration u/s 185. The second question does not arise in this matter because the Tribunal has not entertained this question in granting of continuation of registration. Obviously, when the first question has been answered in favour of the assessee for grant of a fresh registration, the answer to the second question does not arise in the matter. Accordingly, the first question is answered in favour of the assessee with the modification that the Income Tax Officer shall allow opportunity to the assessee to rectify the said mistake in Form No. 11 as directed by the Tribunal and grant registration to the firm accordingly.