
(1980) 10 MP CK 0019

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 485 of 1976

Sanjay Cotton Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Oct. 23, 1980

Acts Referred:

- Income Tax Act, 1961 - Section 184(1), 185
- Partnership Act, 1932 - Section 13

Citation: (1982) 134 ITR 248 : (1981) JLJ 150

Hon'ble Judges: K.N. Shukla, J; G.G. Sohani, J

Bench: Division Bench

Advocate: M.S. Choudhary, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

Shukla, J.

The Income Tax Appellate Tribunal, Indore, has referred the following question for our opinion :

" Whether, on the facts and in the circumstances of the case, the assessee was entitled to the grant of registration u/s 185 of the Income Tax Act, 1961, for the assessment year 1967-68 and for continuance of registration of the firm for the assessment year 1968-69 ? "

2. The assessee is a firm. It had filed an application for registration in the prescribed Form No. 11 along with a copy of the partnership deed dated 20th November, 1965, for the assessment year 1967-68. For the following assessment year 1968-69, the assessee filed an application for continuation of registration in Form No. 12 as prescribed. As registration was not granted for the assessment year 1967-68, application for continuation was also rejected by the ITO.

3. The constitution of the assessee-firm as set out in the partnership deed dated 20th November, 1965, is as follows:

The constitution of the assessee-firm as set out in the partnership deed dated 20th November, 1965, is as follows:

(1)	Smt.	30
	Sushila	paise
	Devi, w/o.	in
	Rameshchandra	a
	Agrawal	rupee.
(2)	Shri	30
	Ultamchandji,	paise
	s/o.	in
	Mishrilalji	a
		rupee.
(3)	Shri	30
	Santosh	paise
	Trading Co.	in
	through its	a
	partners	rupee.
(4)	Shri	10
	Phoolchandji	paise
	Ghisalalji	in
		a
		rupee.

4. In the preamble of the partnership deed partner No. (3) is described as " partners of M/s. Santosh Trading Co., respectively, Shri Mishrilalji Ratan-lalji Chopra, Shri Bhanwarlalji Misrilalji and Shri Hemchandji Mishrilalji ". The partnership deed is signed by all the six partners, i. e., partners Nos. (1), (2) and (4) and the three partners of M/s. Santosh Trading Co. Application for registration in the prescribed Form No. 11 has also been signed by all the six partners who. have signed the partnership deed as the partners of the assessee-firm. The partnership deed in Clause 6 specifies the shares in the profit and loss of the partners. The share of the firm, M/s. Santosh Trading Co., through the partners has been mentioned as 30 paise in a rupee. This share represented the composite share of all the three partners who constituted the smaller firm, Shri Santosh Trading Co.

5. The ITO refused to grant registration on two grounds. First was that the partnership was not legal because a firm could not become partner of another firm. Second ground was that the individual shares of the partners who were partners of the Santosh Trading Co. had not been specified in the assessee-firm. This decision was maintained by the AAC as well as the Appellate Tribunal.

6. Learned counsel for the assessee contended before us that the firm was entitled to registration u/s 185 of the I.T. Act because it substantially complied with the requirements of ss. 184 and 185 of the Act. Learned standing counsel for the revenue, however, supported the order of the Appellate Tribunal and argued that registration was rightly refused on both the counts, i. e., (i) the partnership was not valid as one of the partners was itself a firm and a firm could not enter into partnership qua firm, and (ii) that the individual shares of the partners of the firm, Santosh Trading Co., in the assessee-firm were not specified in the partnership deed.

7. Section 184(1) of the I.T. Act is as follows ;

" 184. (1) An application for registration of a firm for the purposes of this Act may be made to the Income Tax Officer on behalf of any firm if-

(i) the partnership is evidenced by an instrument; and

(ii) the individual shares of the partners are specified in that instrument."

8. This section provides for an application for registration of a firm for the purposes of this Act. Section 185(1) lays down the procedure on receipt of an application for registration. It provides that the ITO shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership. If he is satisfied about these two requirements he has to pass an order registering the firm for the assessment year.

9. Chapter XVI of the Act sets out special provisions for the assessment of firms. Sections 182 and 183 provide for the assessment of registered and unregistered firms respectively. It will appear from these provisions that the tax burden on a registered firm and its partners is lower than that on a unregistered firm, and the partners of such a firm. The assessee, therefore, seeks the aid of the provisions for the registration of firms.

10. The requirements u/s 184(1) (i) and (ii) of the Act as set out above are intended for the purpose of ascertaining the genuineness of the firm and its constitution as specified in the instrument of partnership. The specification of individual shares is necessary for apportioning the income falling to the shares of the individual partners for tax assessments of their total income. There is no ritualistic sanctity about the requirements as to specification of the shares of the individual partners in the instrument of partnership itself because, as observed above, the purpose is to ascertain the share income of each partner for assessing his total income.

11. In [Chhotalal Devchand Vs. Commissioner of Income Tax, Bombay City II](#), the question of registration of the firm had arisen on the following facts. A partnership was arrived at between three parties, viz., two firms and an individual. The deed was signed by all the individuals constituting the two firms and the individual partner. The capital was to be contributed by the three parties and the profit and loss was also to be divided in equal shares by the parties. Registration was refused on the ground, (i) that it was not a valid partnership as it was constituted of two firms and an individual, (ii) that in the books of accounts of the partnership the profits were credited not to the names of each constituent individual but only to the names of the firm, and (iii) that the deed of partnership did not specify the share of each of the individual constituting the two firms. On a reference, the Bombay High Court held that it was the constituent members of the two firms and not the two firms as entities that had entered into the partnership with the individual and, therefore, the partnership so constituted was a valid partnership. It was held that the fact that the profits were not credited to the individual accounts of the constituent members of the two firms, but were credited to the accounts of the two firms, was immaterial and finally that as there were partnership deeds constituting the two firms and those deeds were on the file of the department and for the ascertainment of the shares of the constituent individual of these firms they were relied upon, it was not necessary that the deed of partnership itself should have specified the shares of the individuals.

12. This case which has stood the test of time and judicial scrutiny so far, fully applies to the facts of the present case and lays down, according to us, the correct law. This decision was followed by the Madras High Court in [A. Asha and Co. Vs. Commissioner of Income Tax](#), . The Supreme Court in [Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur](#), , was dealing with the case of a firm wherein the partnership deed provided only that " profits or losses shall be divided amongst the partners ". Individual shares of the partners were not specified in that instrument. The Supreme Court observed that relevant circumstances and other evidence could be looked into for ascertaining the individual shares of the partners in the profits within the meaning of Section 26A (1922 Act) even though there was no clause specifying the individual share of each partner. This case is an authority for the proposition that "specification of individual shares for the purposes of the Act" can be ascertained from other relevant material.

13. In [Kylasa Sarabhiah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh](#), , the Supreme Court laid down certain guidelines for purposes of the Act even when strict compliance with the requirements of Section 26A(1922 Act) had not been made. In the cited case also a smaller firm had been shown as a partner of the larger firm. Besides, the shares of individual partners in profits and losses had not been specified in the partnership deed of the larger firms but the same was ascertainable from the partnership deed of the smaller firm. The Supreme Court overruling the decision of the Andhra Pradesh High Court in

[MESSRS. KYLASA SARABHAIAH Vs. COMMISSIONER OF Income Tax, ANDHRA PRADESH.,](#) , held that the firm was entitled to registration.

14. The Madhya Pradesh High Court in [Parekh Wadilal Jivanbhai Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur,](#) and [Kylasa Sarabhiah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh,](#) , held that the specification of shares in the partnership deed need not be express and it may be implied. According to the Madhya Pradesh High Court the requirement of Section 26A(1922 Act) is satisfied if the deed can be reasonably construed as clearly implying that the shares of the partners are equal. Similar view has been taken by the Andhra Pradesh High Court in [Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others,](#) and [Commissioner of Income Tax Vs. Krishna Mining Co.,](#) .

15. The Appellate Tribunal had relied on an earlier decision of the Andhra Pradesh High Court in [Khummaji Milapchand and Co. and Another Vs. Commissioner of Income Tax,](#) . This case was overruled by the same High Court in [Commissioner of Income Tax Vs. Hyderabad Stone Depot and Others,](#) , which was approved later by a larger Bench of the same High Court in [Commissioner of Income Tax Vs. Krishna Mining Co.,](#) .

16. Learned counsel for the department relied on a decision of the Punjab High Court in [Jodha Mal Ghungar Mal and Others Vs. Commissioner of Income Tax, Simla \(Punjab\),](#) . The cited case can be distinguished on facts. In that case, the partnership deed was not signed by all the partners. The Punjab High Court was of the view that since the shares of some of the partners were not specified in the deed itself the firm was not entitled to registration. The Punjab High Court sought support from the decision of the Andhra Pradesh High Court in [MESSRS. KYLASA SARABHAIAH Vs. COMMISSIONER OF Income Tax, ANDHRA PRADESH.,](#) , but as noted earlier this decision was reversed by the Supreme Court in [Kylasa Sarabhiah, Bombay Cloth Shop, Secunderabad Vs. Commissioner of Income Tax, Andhra Pradesh,](#) . The Punjab decision is contrary to the trend of decisions of the Supreme Court and various High Courts cited above.

17. Learned counsel for the department referred to a decision of the Supreme Court in [Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur,](#) , in which it was observed that a firm is not a partner and as such is not entitled to enter into a partnership with another firm. In the cited case the partners of the smaller firm which had joined the larger firm had not signed the partnership deed. Only one partner of each of the three smaller firms which constituted the larger firm had signed the deed. On those facts the Supreme Court held that the firm was not a legal entity and was not entitled to registration. The Supreme Court decision will, therefore, not apply to the facts of this case.

18. As already observed, the partnership deed in the present case was signed by all the partners of the smaller firm, namely, Shri Santosh Trading Co. The preamble of the deed also indicated clearly that though the firm's name was compendiously mentioned as partner No. (3), in fact each of the partners of the smaller firm was a partner of the new firm and, therefore, it could not be said that it was a partnership between two firms. Learned counsel for the department invited our attention to Clauses 5 and 6 of the partnership deed to support his contention that it was the firm, San-tosh Trading Co., which was a partner of the assessee-firm and not the individual partners of that firm. We have examined the deed and the overall intention of the contracting parties which can be culled out from this instrument is that the partners of the firm, Santosh Trading Co., had entered into the partnership agreement with other partners and, therefore, the firm was constituted legally.

19. It is true that the share of the partners of Santosh Trading Co. had been specified as 30 paise in a rupee. This was the composite share of all the three partners of Santosh Trading Co. and their individual share had not been specified in the deed itself. The ITO had written a letter to the assessee-firm drawing its attention to this lacuna. The reply on behalf of the assessee was that the sharing ratio of the partners of Santosh Trading Co. could be looked into for the purpose of ascertaining the individual share of each partner therein. In another letter it was submitted alternatively that if that was not possible then shares should be deemed to be equal in accordance with Section 13 of the Partnership Act.

20. The ITO examined the instrument of partnership of the firm, Santosh Trading Co., as he was dealing with the assessment of that firm as well. After examining that document from the records of that firm, the ITO observed that the claim of the assessee that shares of the three partners of Santosh Trading Co. may be taken as equal was "in conflict with their profit and loss sharing ratio as per the partnership deed" of Santosh Trading Co. He, therefore, refused registration.

21. Indeed this was a queer proposition. The ITO had all the necessary and relevant material before him for ascertaining the individual shares of the three partners of Santosh Trading Co. and on that basis he could easily hold that the shares of the partners had been specified for purposes of fixing their tax liability. It was not necessary to take a rigid and over-legalistic stance on the issue in view of the various decisions of the Supreme Court and the High Courts on the subject. He had already examined the partnership deed of the firm, Santosh Trading Co., and on that basis was in possession of the necessary material which specified the shares of the partners in the assessee-firm. The submission made by the assessee in the alternative that in the absence of any other material their shares should be treated as equal, could not be pressed into service for rejecting the claim for registration. The submission was only a limb of the general argument that the shares of the individual partners were specified for purposes of the grant of registration.

22. The Appellate Tribunal also took an inconsistent position. It observed at one stage that the partnership deed of Santosh Trading Co., which was before the ITO, could not be looked into for the purpose of finding out whether the shares of the individual partners had been duly specified. But at the same time the Tribunal itself considered that deed for repelling the alternative submission of the assessee that u/s 13(b) of the Partnership Act their shares should be deemed to be equal.

23. In sum, it is clear that the partnership deed was signed by all the partners individually, the application for registration was also signed by all the partners separately and the shares of the partners had been specified and the same could be ascertained from the relevant material already before the ITO. On these facts, the assessee-firm was entitled to the grant of registration u/s 185 of the I.T. Act, 1961, for assessment year 1967-68, and for continuance of registration of the firm for assessment year 1968-69.

24. We, therefore, answer the question referred to us in the affirmative and in favour of the assessee. Costs of this reference shall be borne by the department. Advocate's fee Rs. 150.