

(1990) 04 CAL CK 0030

Calcutta High Court

Case No: IT Reference No. 347 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Salkia Transport Associates

RESPONDENT

Date of Decision: April 23, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 256(1)

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Division Bench

Judgement

Bhagabati Prasad Banerjee, J.

The Tribunal has forwarded the following question of law to this Court u/s 256(1) of the income tax Act, 1961 ("the Act").

Whether, on the facts and in the circumstances of the case, the Tribunal: was right in holding that the object of the partnership was not illegal and in upholding the orders of the Appellate Assistant Commissioner directing the income tax Officer to grant continuance of registration to the assessee-firm for the assessment years 1973-74 and 1974-75 ?

In the present proceeding the assessment years involved are 1973-74 and 1974-75 for which the relevant years of account are the years ended on 31-3-1972 and 31-3-1973.

2. The facts of this case as appearing from the statement of case are as under.

3. For the assessment years under reference, as for the earlier assessment years, the assessee-firm made a declaration in Form No. 12 seeking continuance of registration. The ITO rejected the declaration in Form No. 12 on the ground that for the preceding assessment years the assessee-firm was refused registration and treated as an AOP and the question of granting continuance of registration did not, therefore, arise. On appeals preferred by the assessee-firm against these orders of

the ITO refusing continuance of registration, the AAC held that the orders of the ITO were no longer valid, since in the appeals preferred by the assessee-firm for the preceding assessment years 1971-72 and 1972-73 the AAC granted continuance of registration to the assessee-firm. He, accordingly, directed the ITO to grant registration to the assessee-firm and take the status of the assessee-firm as that of a registered firm for the two assessment years under reference. Being aggrieved by the orders of the AAC, the Department preferred appeal before the Tribunal and in the appeal the Tribunal upheld the decision of the AAC directing the ITO to allow registration to the assessee-firm for the assessment years under appeal. In its judgment the Tribunal relied on two decisions, one being of the Madhya Pradesh High Court in the case of [Dayabhai and Co. Vs. Commissioner of Income Tax](#), and the other being of the Madras High Court in the case of [T.K.P.R. Ramanatha Chettiar and Brothers and Another Vs. Commissioner of Income Tax](#), . In the earlier years, that is, for the assessment years 1966-67 to 1972-73 the Tribunal upheld the orders of the AAC directing the ITO to allow registration to the assessee-firm for the said assessment years. The learned counsel appearing on behalf of the revenue could not produce anything to show what happened in the earlier years, that is, for the assessment years 1966-67 to 1972-73. In the case of Dayabhai & Co. (supra) the Madhya Pradesh High Court held that if the partnership is legal, mere failure to obey some statutory provisions would not make it illegal. This is a case where the firm was carrying on motor transport business. Permit for vehicle was in the name of one partner. The question was whether the partnership was illegal or not. The Madhya Pradesh High Court held that if the object of the partnership is valid, mere violation of some of the provisions of the statute would not render partnership invalid. The Madras High Court in the case of T.K.P.R. Ramanatha Chettiar & Bros. (supra) found that in this case the firm was the owner of lorries. The lorries were being plied on the basis of permits standing in another name. The partnership cannot be regarded as illegal merely because permits with regard to them stood in the name of the original owners. It could not be established that the object of partnership was invalid or against the public policy. Merely because in the course of business the partnership violated the provisions of some other law, that would not make the partnership invalid because there should be some such violation for which the firm may or will suffer penal consequences under the statute. In respect of other violation the ITO cannot take notice of the fact for the purpose of granting or refusing to grant registration of the firm. The firm has to be registered. If the object is lawful, it cannot go into it. The Tribunal has found that they have made violation of some other law. That is beyond the job of the ITO here. He cannot take note of the same and take action in this matter. We do not find any infirmity in the order of the Tribunal. Accordingly, the question of law is answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Suhas Chandra Sen, J.

I agree.