

(1976) 03 DEL CK 0018

Delhi High Court

Case No: Income Tax C. No. 62 of 1976

THE COMMISSIONER OF Income
Tax, CENTRAL REVENUE
BUILDING, DELHI-I, NEW DELHI

APPELLANT

Vs

M/S. ASHOKA INVESTMENT CO.,
D-38, GREATER KAILASH, NEW
DELHI.

RESPONDENT

Date of Decision: March 30, 1976

Citation: (1976) 5 CTR 184

Hon'ble Judges: T. V. R. Tatachari, C.J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

T. V. R. Tatachari, C.J. - This is an application filed by the Comm., Income Tax Delhi-I, New Delhi, u/s 256(2) of the Income Tax Act, 1961, praying that the Income Tax Appellate Tribunal be required to state the case and refer the following question stated to arise out of the order the said Tribunal, dated 3rd March, 1975, in Income Tax appeal No. 2483 of 1973-74 relating to the assessment year 1970-71 :

"1. Whether on the facts and in the circumstances of the case, was the Tribunal right in coming to the conclusion that the application for registration of the firm should be granted ?

2. Whether on the facts and circumstances of the case was the Tribunal right in coming to the conclusion that firm was entitled to benefits of registration ?

2. The assessed firm, M/s. Ashok Investment Co., Delhi was constituted under a deed of partnership, dated 1st September, 1964, consisting of two partners, Shri K. L. Rajgarhia and Smt. Shanti Devi Kedia. Three minors were also admitted to the benefits of the partnership. Shri K. L. Rajgarhia retired on 31st March, 1967. The firm was reconstituted with effect from 1st April, 1968 under a new deed of partnership,

dated 12th March, 1969. The new firm consisted of Smt. Shanti Kedia and Shri Anand Kumar, who were the major partners, and the three minors admitted to the benefits of the partnership.

3. The firm had been granted registration originally on the basis of the partnership deed, dated 1st September, 1964, and the same was renewed from year to year till the assessment year 1967-68. After the retirement of Shri K. L. Rajgarhia on 31st March, 1967, the Income Tax Officer treated the firm as an AOP for the assessment years 1968-69 and 1969-70. However, on appeal, the appellate Assistant Commissioner directed the Income Tax Officer to grant registration to the firm for the assessment year 1968-69 and renewal of registration for the assessment year 1969-70. Against that order, the Revenue went up in appeal to the appellate Tribunal in Income Tax Appeal Nos. 1478, 1479 and 1480 of 1973-74. By its order dated 20th August, 1974, the Tribunal held that the firm was genuine and Smt. Shanti Devi Kedia and Shri Anand Kumar were not the Benamidars of Shri K. L. Rajgarhia. In that view, the Tribunal dismissed the aforesaid appeals preferred by the Revenue. Thereupon, the Commissioner Income Tax, filed applications Nos. 626 and 628 of 1974-75 u/s 256(1) of the Income Tax Act praying that the question of registration of the referred to the High Court. The said applications were, however, dismissed by the Tribunal on 4th February, 1975.

4. As regards the assessment year 1970-71, the Income Tax Officer had refused to allow continuation of registration. But on appeal, the Appellate Assistant Commissioner allowed the continuation for the same reasons for which he had granted registration for the assessments years 1968-69 and 1969-70. The Revenue again preferred an appeal against that order to the Tribunal, and the Tribunal, by its order dated 3rd March, 1975, dismissed the appeal holding that the firm was genuine and Smt. Shanti Devi Kedia and Shri Anand Kumar were not the Benamidars of Shri K. L. Rajgarhia. The Commissioner Income Tax thereupon filed an application u/s 256(1) of the Income Tax Act before the Tribunal praying that the two questions mentioned above be referred to this Court. The Tribunal, however, dismissed the application holding that no question of law arises out of the impugned order of the Tribunal. Hence the present application u/s 256(1) of the Income Tax Act.

5. It is obvious that the findings of the Tribunal in impugned order dated 3rd March, 1975, that the firm was a genuine one and Smt. Shanti Devi Kedia and Shri Anand Kumar were not the Benamidars of Shri K. L. Rajgarhia are pure findings of fact. The Tribunal was, Therefore, justified in stating that no question of law can be said to arise out of the impugned order and dismissing the application for the reference. For the same reason, we also decline to require the Tribunal to make the reference. I.T.C. No. 62 of 1976 is dismissed in liming.