
(2001) 01 DEL CK 0129

Delhi High Court

Case No: Income-tax Reference No. 303 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Raj Brothers

RESPONDENT

Date of Decision: Jan. 16, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 256(2), 28

Citation: (2001) 252 ITR 438 : (2001) 116 TAXMAN 824

Hon'ble Judges: Dr. Arijit Pasayat, C.J; D.K. Jain, J

Bench: Division Bench

Advocate: Sanjeev Khanna and Ajay Jha, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C.J.

Pursuant to the directions given by this court u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), the following question has been referred by the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi (for short "the Tribunal"), for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and particularly in view of the credits appearing in the books of the assessed-firm in the account of a sister concern, namely, Raj Bros., Tailors, the Tribunal was right in holding that the two firms, namely, Raj Bros., Tailors and Drapers and Raj Brothers Tailors, were for the purpose of assessment separate persons ?"

2. The dispute relates to the assessment year 1974-75. The assessed-firm is styled as Raj Brothers, Tailors and Drapers. There is another firm in the name of Raj Brothers Tailors. The assessed-firm deals in cloth. The other firm acts as tailors only. The constitution of both the firms is same. Both the firms have three partners and their profit and loss sharing ratio is also the same. In these circumstances, the Income Tax Officer required the assessed to show cause as to why the income of the other firm should not be clubbed with the income of the assessed. The assessed filed its

reply which was not accepted. The Income Tax Officer refused registration and assessed the firm as U. R. F. The matter was carried in appeal before the Appellate Assistant Commissioner (in short "the AAC"), who held that merely because both the firms had common partners and the same profit/ loss sharing ratio, it would not in any way lead to the conclusion that there was no separate existence of the two firms. Accordingly, he directed deletion of the income of the other firm clubbed with that of the assessed-firm. The matter was carried in appeal before the Tribunal. Placing reliance on a decision of the Andhra Pradesh High Court in Addl. CIT v. Visakha Flour Mills [1977] 108 ITR 466 , the Tribunal held that there was no unity of control and the two firms had separate and independent entities. The assessed's prayer for reference u/s 256(1) of the Act was turned down. However, pursuant to the directions of this court, the question as set out above has been referred for the opinion of this court.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice. According to learned counsel for the Revenue the intention has to be gathered from several facts which the Tribunal did not examine. Therefore, its conclusions are not sustain-able.

4. As was observed by the apex court in [Deputy Commissioner of Sales Tax \(Law\), Board of Revenue \(Taxes\), Ernakulam Vs. K. Kelukutty](#) , the intention of the parties to carry on a business and share its profits has to be gathered from several facts. It will all depend on the intention of the partners. Such intention has to be analysed with reference to the terms of the agreement and all the surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance and other incidents of the respective businesses. We find substance in the plea of learned counsel for the Revenue that these aspects have not been analysed in detail by the Tribunal. Therefore, we remit the matter back to the Tribunal for fresh adjudication keeping in view the observations of the apex court in the aforesaid case.

5. The reference stands disposed of.