

## **Ram Laxman Sugar Mills vs Commissioner Of Income-Tax, Uttar ... on 17 March, 1967**

**Equivalent citations: [1967]66ITR613(SC), AIRONLINE 1967 SC 24, (1967) 66 ITR 613**

**Bench: J.C. Shah, S.M. Sikri**

### **JUDGMENT**

Shah J.

1. A deed of partnership for carrying on the business of a sugar factory in the name and style of M/s. Ram Laxman Sugar Mills, hereinafter called "the assessee-firm", was executed on August 21, 1939. There were two parties to the deed, the first party being Lala Suraj Bhan of Delhi representing the joint Hindu family of Dina Nath Nanak Chand, and Lala Debi Pershad, Lala Jwala Pershad, Lala Sheo Pershad, Lala Ganpat Pershad Lala Maidhan, Lala Mai Diyal and Lala Matu Ram collectively referred to as the second party. There was a partial partition on August 21, 1947, among the members of Dina Nath Nanak Chand and the joint family status was severed. By deed dated September 8, 1943, the eight annas share which was allotted to Lala Suraj Bhan in the assessee firm was divided between the four members of the family : four annas going to Lala Suraj Bhan and the remaining four annas to three other members. By a subsequent deed dated March 18, 1950, this arrangement was confirmed. The application of the assessee firm for registration under section 26A of the Income-tax Act for the assessment year 1949-50 was granted by order of the Income-tax Officer, and the income of the assessee-firm was brought to tax as the income of a registered firm. Registration of the assessee-firm for the year 1950-51 also was granted by the Income-tax Officer, but the order was cancelled by the Commissioner of Income-tax in exercise of the power under section 33B of the Income-tax Act. The Commissioner was of the view that under the deed of partnership the joint Hindu family of Dina Nath Nanak Chand had become a partner and as soon as the joint family status was severed the Partnership deed became inoperative, since the deed "represented a state of affairs which had become non-existent."

2. In appeal, the Income-tax Appellate Tribunal confirmed the order, but on different grounds. The Tribunal observed that under the deed of partnership all the members of the joint family of Dina Nath Nanak Chand called the first party and the other partners referred to as the second party has entered into the contract of partnership. Such partnership could in the opinion of the Tribunal be registered only if all the members who were partners signed the instrument of partnership and also the application for renewal of registration, and since all the members of partnership had not signed the application for renewal of registration, registration could not be granted.

3. The Tribunal referred under section 66(1) of the Income-tax Act, 1922, the following question to the High Court of Judicature at Allahabad;

"Whether, on the facts and in the circumstances of the case, the order canceling renewal of registration was proper and justified ?"

4. The High Court answered the question in the affirmative. They observed that after severance of the joint family status among the members of Dina Nath Nanak Chand, the partnership deed dated August 21, 1939, ceased to represent truly the constitution of the firm, and that since all the members of the Hindu undivided family were partners under the instrument of partnership and not merely the karta, the application for renewal not signed by all the members could not be maintained. Against the answer recorded by the High Court in the affirmative, with special leave, the assessee firm has appealed to this court.

5. The answer to the question referred to the High Court primarily depends upon the true effect of the deed of partnership. A Hindu undivided family is undoubtedly a "person" within the meaning of the Indian Income-tax Act : It is however not a juristic person for all purposes, and cannot enter into an agreement of partnership with either another undivided family or individual. It is open to the manager of a joint Hindu family as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the manager and the other person, and by the partnership agreement no members of the family except the manager acquires a right or interest in the partnership. The junior members of the family may make a claim against the manager for treating the income or profits received from the partnership as a joint family asset but they cannot claim to exercise the rights of partners nor be liable as partners.

6. The Commissioner of Income-tax and the Tribunal proceeded upon somewhat different grounds. In the view of the Commissioner the Hindu undivided family had purported to enter into an agreement of partnership and the Commissioner assumed that under the agreement of partnership the joint family acquired the status of a partner, but when the family ceased to exist by virtue of severance of the joint family status the partnership agreement became ineffective. The Tribunal was of the view that the partnership deed and the application of renewal of registration had to be signed by all the members of Dina Nath Nanak Chand and that as they were not so signed the Income-tax Officer had no power to grant renewal. The High Court agreed with the Tribunal and did not express any opinion on the view expressed by the Commissioner.

7. Counsel for the assessee firm submits that the High Court misinterpreted the deed of partnership. He says that the agreement of partnership was made between Lala Suraj Bhan on the one hand and the second party on the other, and that the recital that Lala Suraj Bhan represented the joint Hindu family Dina Nath Nanak Chand, did not operate to make the members of that family partners of the firm in their own right. In adjudicating upon that plea the court has in the first instance to determine the intention of the parties as disclosed by the recitals in the deed of partnership and other relevant circumstances. A Hindu undivided family consists of males lineally descended from a common ancestor in the male line and their respective wives and unmarried daughters. From the very nature of its fluctuating composition consisting of members, some of whom may not have attained the age of majority and some may at a given time be unborn, the family as a unit is incapable of entering into any contractual relationship, and therefore into a partnership agreement contemplating the creation of mutual rights of agency among its members. Could it then have been

intended by the partners who are described as the second party to enter into an agreement of partnership to carry on the business of a sugar factory with the members of the joint family some of whom may even be incompetent to contract ?

8. In ascertaining the legal effect of a transaction the court seeks in the first instance to determine the intention of the parties, and when ambiguous expressions are used the court may normally adopt that interpretation which upholds the deed, if the parties thereto have acted on the assumption of its validity. From the mere fact that the manager of a Hindu undivided family describing himself as representing the family entered into an agreement of partnership with other persons, it cannot be inferred that an agreement of partnership was intended contrary to law between a Hindu undivided family consisting of all adult members, females, minors and even unborn persons and strangers to the family.

9. A partnership under section 4 of the Indian partnership Act is "the relation between person who have agreed to share the profits of a business carried on by all or any of them acting for all." Under an agreement of partnership there must arise the relation of principal and agent inter se between the members of the partnership for the purpose of carrying on the business. The intention disclosed by the deed was that Lala Suraj Bhan was to be a partner, and he was described as manager and he signed the document in that capacity; it did not thereby seek to bring into existence a relationship of partners between the Hindu undivided family and the other members described as the second party. Nor can it be said that by this agreement it was intended to make all the adult members of the Hindu undivided family of Dina Nath Nanak Chand partners of the assessee- firm. None of the clauses of the deed of partnership evidences an intention that the members of the partnership were to be agents inter se or agents of the members of the second party for the purpose of carrying on the business of the assessee-firm. In our view, the true interpretation of this clause is that Lala Suraj Bhan was the first party under the deed. He was merely described as the manager of the joint Hindu trading firm known and styled as Messrs. Dina Nath Nanak Chand, but thereby there was no attempt to make the family a partner of the firm.

10. Reliance was placed upon certain clauses of the deed of partnership which, counsel for the Commissioner says, evidenced an intention that the members of Dina Nath Nanak Chand were to be partners of the assessee-firm. Clause 6 of the deed of partnership stated :

"Notwithstanding anything herein contained to the contrary the second party may at their discretion recover their dues from the share of income of the first party on account of the profits of the said Mills.

11. If however the first party meant Lala Suraj Bhan this clause does not indicate that the members of the joint family, of which Lala Suraj Bhan was the manager, become on that account partners. In clause 7 it was stated inter alia :

"It is declared that though the members of the second party have got their shares inter se defined that members of the second party shall be treated as one group and would be jointly entitled to the rights and be responsible for the liabilities as a

partner to the first party. Likewise the members of the first party would be jointly entitled to the rights and be responsible for the liabilities as a partner to the second party."

12. The first part of the clause does not indicate that the members of the joint family, Dina Nath Nanak Chand, were entitled to enforce any claim against the second party. The second part is somewhat obscure. The expression "members of the first party" means, in our judgment, having regard to the other covenants, Lala Suraj Bhan alone : it was not by the use of that expression intended to invest the members of the joint family of Dina Nath Nanak Chand with the rights and liabilities of the partners. Several other clauses of the deed, e.g., clauses 8 and 15 and other clauses seek to emphasize that the members of the joint family of Dina Nath Nanak Chand were not entitled to interfere with the management or to deal with the assets of the partnership. But no implication arise therefrom that but for those covenants the members of the joint family would have the competence or the rights negated thereby. By clause 17 it is provided that in case of death or inability of either of the managing directors to manage the business, it shall be open to the members of either parties to replace such managing director by another person from the group which was represents by the dead or incapacitated managing director. The clause only provides a scheme for the continuation of the business and does not confer of partnership upon the member of the joint family of Dina Nath Nanak Chand. The signature of Lala Suraj Bhan who signed the document "For and on behalf of Dina Nath Nanak Chand manager and karta" only indicates that Suraj Bhan was acting as a manager of the family in entering into the partnership agreement. Thereby he was not seeking to make the members of the joint family, Dina Nath Nanak Chand, partners of the assessee-firm.

13. The deed has not been carefully drawn up, and somewhat inconsistent recitals have been made. But taking an overall view of the diverse covenants, we hold that the partnership agreement was between Lala Suraj Bhan on the one hand, and the named persons on the other, and the fact that Lala Suraj Bhan was originally the karta of the joint family, Dina Nath Nanak Chand, and that joint family had later ceased to exist by reason of partition will not affect that validity of the partnership or its continuance. Lala Suraj Bhan being the contracting party, the application for registration could not be rejected because the other member of the joint family, Dina Nath Nanak Chand, did not sign the application for renewal of registration of the firm for the year 1950-51.

14. The appeal must therefore be allowed and the order passed by the High Court set aside. The answer to the question will be in the negative. The appellants will be entitled to their costs of the appeal.

15. Appeal allowed.