

Commissioner Of Income-Tax, Mysore vs Shah Jethaji Phulchand on 25 April, 1965

Equivalent citations: [1965]57ITR588(SC)

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Sikri, J.

1. These two appeals pursuant to a certificate granted by the High Court of Mysore under section 66A(2) of the Income-tax Act are directed against the judgment of the High Court answering the question referred to it in favour of the respondent-assessee. The question referred to is :

Whether the assessee, Messrs. Shah Jethaji Phulchand can be granted registration under section 26A of the Indian Income-tax act on the basis of the deed made on November 20,1950, for the assessment year 1953-54 and/or 1954-55 ?"

2. The relevant facts are these. The respondent M/s. Shah jethaji Phulchand hereinafter called "the assessee", is a firm constituted by a partnership deed dated November 20, 1950. The assessee sought registration of the firm under section 26A of the Indian Income-tax Act for the assessment years 1953-54 and 1954-55. The deed of partnership was entered into between five years : (1) Nathmal Jethaji, (2) Phulchand, (3) S. Babulal, minor son of jethaji; (4) Sakalchand Thikmaji and (5) Jethibai. The relevant clauses of the agreement on which the learned counsel have made comments are these :

3. Whereas the above 5 parties have agreed to do business of cotton and kapas, purchases, and sales and on commission basis, etc. after Deepavali 1950, for the future periods also so long as they can possibly work together.

4. Now they agree between the above 5 parties as hereunder :

(1) That the above five parties shall establish cotton business, and carry on the same at Davangere with branches in the surroundings areas under the name and style "Jethaji Phulchand".

(2) That the capital of the business shall be Rs. 2,75,000 contributed from the parties of the firm :

The 1st Party shall contribute of Rs. 1,56,000 (One lakh fifty-six thousand).

The IInd parry shall contribute Rs. 22,500 (Twenty-two thousand five hundred).

The IIIrd party shall contribute Rs. 70,000 (Seventy thousand).

The IVth Party shall contribute Rs. 22,500 (Twenty-five thousand five hundred).

The Vth party shall contribute Rs. 10,000 (Ten thousand).

(3) that all the business of partnership shall be carried on in the name of the partnership only and that the partners shall be at liberty to carry on cotton business in their individual capacity with different capital without the consent of other parties.

The partners doing business in their individual capacity need not disclose their profits of the individual business to the other partners of this partnership.

(4) That this partnership shall have effect from Deepavali 1950 as previously agreed and as the same as already been working as such with effect from that date and the same shall be in existence for such periods as the parties desire. The partnership shall be terminated at the will of any of the partners.

(5) That the partners shall have a right to borrow any money required for partnership business at prevailing rate of interest.

(6) That the profits and loss of the company shall be shared by the partners in the following proportions irrespective of the contribution of the capital.

1st party shall be entitled to Rs. 0-3-6 IInd party shall be entitled to Rs. 0-3-0 IIIrd party shall entitled to Rs. 0-3-3 IVth party shall entitled to Rs. 0-3-0 Vth party shall be entitled to Rs. 0-3-3 Half an anna of the profits shall be credited to, the Charity Fund, the portion of loss to be contributed by the 3rd party is to be borne by the fist party and adjusted in the accounts.

(16) That (1) Nathmal Jethaji, (2) Phulchand Nathmal, (3) Sakalchand Thikmaji, shall be working partners. They shall have the right of doing business, borrowing moneys from banks and other persons, drawing cheques on account of the firm is the banks and generally they shall have all the rights connected with business."

3. The Income-tax officer rejected the applications for registration for 1953-54 and 1954-55 on the ground that there were no value applications for renewal of registration. Apparently the firm had been registered in the earlier assessment years.

4. For the assessment year 1953-54, the Appellate Assistant Commissioner, inter alia, held that the partnership deed on which the application was based was defective. He observed : "The minor, is made a party of the partnership through Nathmal Jethaji the natural father, who is incidentally not the real guardian as discussed already. No minor can enter into a contract for partnership either by

himself or through a guardian." For the assessment year 1954-55, he held that although the minor was not liable for loss but he was described as a partner and was vested with all the rights relating to the conduct of the business along with the other partners and was thus treated as a full-fledged partners. He held that the contract of partnership was void in law, and therefore, the firm could not be registered.

5. The Appellate tribunal, by one order, disposed of the two appeals relating to both the assessment years. Relying on *Jakka Devayya and Sons v. Commissioner of Income-tax*, it held that the minor could be regarded as only having been admitted to the benefits of partnership. The High Courts, on reference, as already stated, answered the question in favour of the assessee.

6. We have just delivered judgment in *Commissioner of Income-tax c. Shah Mohandas Sadharam*. In that case we have held that a partnership deed must be construed reasonably and that a guardian is entitled to do all things necessary for effectuating the conferment of the benefits of partnership.

7. The question then arises whether deed makes the minor a full partner or he has been admitted only to the benefits of partnership. There is no doubt that on a true interpretation of sub-clause (9), the minor is not to bear any losses, the losses are to be borne by Nathmal Jethaji. Sun-clause (16) does not make the minor a working partner. The only persons who were entitled to the working partners are Nathmal Jethaji, Phulchand Nathmal and Sakalchand Thikmaji, it is in the light of these clauses that the other clauses should be construed.

8. Mr. Karkhanis drew out attention to sub-clause (2) requiring the third party to contribute Rs. 70,000. There is no provision that the minor will not be entitled to share in profits unless the capital is contributed, for under sub-clause (9) partners are entitled to share in profits irrespective of the contribution of capital. At any rate, as held in *Shah Mohan Das's case*, a guardian can agree to contribute capital. Sub-clause (3) of clause (4) of the partnership deed, which enables the partners to individually carry on the other business can not affect the validity of the deed. Mr. Karkhanis relies specially on sub-clause (4) which states that the partnership shall be terminated at the will of any partner to terminate the partnership shall be clause usually found in partnership deed, and it cannot be said that this clause enables the minor partner to terminate the partnership itself, and in the context it only means, as far as the minor is concerned, that the guardian would be entitled to exercise his right of severance given to him, by section 30 of the partnership act. Sub-clause (5) which enables partners to borrow money obviously has to be read with sub-clause (16) by which only the three minor partners have been designed as working partners. It seems to us that the minor has not been made a full partner but has only been given the benefits of partnership.

9. But the final objection of Mr. Karkhanis requires serious consideration. He says that guardian has by clause 3 and sub-clause 4(1) purported to agree to the starting of business and the constitution of a firm. This, according to him, he was not entitled to do and clauses 3 and 4(1) are void. The learned counsel fir the respondent tried to have acted on his own behalf. But we are unable to sustain these clauses on the ground. Then the question arises : Can a guardian agree to the starting of a business and the constitution of a firm on the condition that the minor shall not be a full partner but only entitled to the benefits of partnership ? In our opinion, there is no bar in law to the guardian

entering into such a contract, for he is only securing the conferment of benefits of partnership on a minor.

10. Therefore, in our opinion, no fatal defect has been pointed out by the learned counsel for the appellant. Accordingly, we hold that the assessee-firm is entitled to be registered, and agreeing with the High Court, we answer the question in the affirmative.

11. The appeals are accordingly dismissed with costs, one set of hearing fees.

12. Appeals dismissed.