

## **Kanodia Brothers, Cawnpore vs Commr. Of Income-Tax, U.P., ... on 25 August, 1952**

**Equivalent citations: AIR1953ALL41, [1952]22ITR311(ALL), AIR 1953  
ALLAHABAD 41**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Y. Bhargava, J.

1. The following question has been referred to this Court by the Income-tax Appellate Tribunal:

"Whether in the circumstances of the present case, renewal of registration of the firm Kanodia Bros. could be allowed on the basis of the partnership deed dated 5-1-1943, which gave a wrong constitution of its branch concern?"

2. The facts given in the statement of the case show that Kanodia Bros. was a partnership firm consisting of four partners, Murlidhar Kano-dia, Manoharlal Kanodia, Jagmohan Lal Kanodia and Bhilai Ram, each having an equal share of four annas in the firm. This partnership had come into existence in the year 1940. The assessment year in respect of which this case has been referred to us is the year 1943-44 and the accounting year relating to that assessment year is from October 1941 to October 1942, corresponding to Asoj, Samvat 1898-99. The accounting year, therefore, ended on 4-10-1942.

A fresh deed of partnership was executed on 5.1. 1943, under which the partners of the firm Kanodia Bros. continued to be the same four partners with the same shares as they had in 1940 in the originally constituted firm. In Clause (s) of this deed, however, it was stated that with effect from Khar Sudi 10, Samvat 1999, corresponding to 4-10-1942, Lala Banwari Lal had been added as a working partner in Murli Manohar Brothers which until that date was a branch of the business of Kanodia Bros. but thereafter ceased to be a branch due to the addition of a new partner. The firm applied that the old registration may be renewed because the firm of Kanodia Bros. was still continuing its business with the same partners and with the same shares so that the constitution of the firm had remained unaltered. The Income-tax Officer refused renewal of the registration on the ground that Clause (8) of the deed of partnership dated 5-1-1943, gave a wrong constitution of the

branch business of Murli Manohar Bros. which in fact, had continued to be the business of Kanodia Bros. and that the recital that Lala Banwari Lal had been added as a working partner in that firm was fictitious.

The Appellate Assistant Commissioner, though agreeing with the finding of the Income-tax Officer that Lala Banwari Lal had not been in fact added as a partner in the branch business of Murli Manohar Bros. disagreed with the Income-tax Officer that this disentitled the firm to the renewal of the registration and directed that the registration should be renewed. The Income-tax Appellate Tribunal on appeal restored the order of the Income-tax Officer and set aside that of the Appellate Assistant Commissioner.

3. In the statement of the case and the appellate order of the Tribunal, we have not found any finding at all to indicate that the firm of Kanodia Bros. had ceased to exist or that its constitution was altered in any manner by the deed of partnership dated 5-1-1943. The partners of the firm as well as their shares continued as before. On the finding of fact given by the Tribunal that the branch firm working under the name of Murli Manohar Brothers was still a branch of Kanodia Bros. it would appear that even the business of Kanodia Bros., has remained unaltered. Under these circumstances Kanodia Bros. are clearly entitled to the renewal of their previous registration. So far as the registration proceedings are concerned the question as to what businesses are being carried on by the firm seeking registration is not relevant. The rules framed do not require that the business of the firm should be shown in the application for registration or the application for renewal of registration. The information that has to be supplied by a firm applying for registration or its renewal has, in the case of the firm Kanodia Bros., remained exactly what it was before the deed of 5-1-1943. The question of the constitution of the branch business, Murli Manohar Bros., may be relevant if and when the firm claiming that business separately applies for its registration. It may also have to be considered when assessing the profits of Kanodia Bros., in order to find out whether the profits of that branch business Murli Manohar Bros., are profits of Kanodia Bros., or not. So far as proceeding for registration of the firm Kanodia Bros. is concerned, this question cannot be taken into consideration and the mere fact that a wrong allegation was made in the partnership deed dated 5-1-1943, cannot justify a refusal to renew the registration after there has been a finding that the firm of Kanodia Bros., has remained unaltered.

4. Our answer to the question referred is, therefore, in the affirmative. The assessee will be entitled to its costs which we fix at Rs. 300.