

## **Manohar Das Kedar Nath vs Commissioner Of Income-Tax, ... on 18 September, 1950**

### **Equivalent citations: [1950]18ITR914(ALL)**

#### **JUDGMENT**

The following three questions have been referred to us under Section 66(2) of the Indian Income-tax Act :-

"(1) Whether there was any material on record which established that the dharmada or charity was a partner under the deed dated 27th February, 1942 ?

(2) Whether on a proper construction of the deed dated 4th February, 1937, the charity was a partner particularly in view of the construction placed upon it in the agreement dated 11th July, 1941 ?

(3) Whether the constitution of the firm under the deed of the 27th February, 1942, was legally defective and whether this firm could not be registered under Section 26A of the Income-tax Act ?"

One Kedar Nath, who was carrying on business, entered into partnership with his adopted son, Gopi Krishna, and one Hari Das, a stranger, on the 27th March, 1935. This partnership was registered by the Income-tax Officer under Section 26A of the Indian Income-tax Act. In the year 1937 there was a change and a fresh deed was executed on the 4th February, 1937, under which Kedar Nath got 5/16ths share in the partnership, Gopi Krishna 6/16ths, Hari Das 2/16ths, Basanti Bibi, wife of Kedar Nath, 2/16ths, and charity or dharmada 1/16th.

It was obvious that dharmada could not be a partner and the parties were clearly wrong when they made dharmada a partner and made it liable for losses and entitled to a share in the profits. The Income-tax Officer registered it under Section 26A for the years 1937-38, 1938-39 and 1939-40, but in 1940-41 the renewal of the registration was refused on the ground that partnership itself was invalid. The partners thereupon sat down to rectify the error and on the 11th July, 1941, they entered into an agreement in which they made the entire profits divisible between the four partners, i.e., Kedar Nath, Gopi Krishna, Hari Das and Basanti Bibi and undertook to contribute 1/16th share of the profits to a common charity fund. To put the matter beyond controversy they executed a fresh deed of partnership on the 27th February, 1942, under which Kedar Nath got 5/15ths share, Gopi Krishna 6/15ths, Basanti Bibi 2/15ths, Hari Das 2/15ths and it was provided that 1/16th share of the profits will not be distributed between the partners but would be kept in a separate charity fund. Application to register this partnership under Section 26A was refused on the ground that it made no substantial change, the charity still remained a partner and the partnership was, therefore, invalid.

The deed has been quoted by the Tribunal in extenso in its order dated 16th April, 1943. On a correct interpretation of the document it is impossible to hold that the charity still remained a partner. It is open to the partners of a business to agree not to take the whole of the profits of the partnership for their own personal use and to reserve a part of the profits for charitable purposes. This is all that they had evidently intended to do in 1937 but had expressed themselves badly. They clarified it in the year 1942 under a document about the interpretation of which there can be no doubt.

On the first question of law there is no suggestion made in the statement of the case that there was any material on the record except the deed itself. Our answer to the three questions, therefore, are that there was no legal defect in the deed of partnership dated 27th February, 1942, that the charity was not a partner and that there was no material on the record from which it could be held that dharmada or charity was a partner in the deed dated 27th February, 1942.

Assessee is entitled to his costs which we fix at Rs. 100.

Reference answered accordingly.