

Supreme Court of India

Textile Supply Co., Assam vs Commissioner Of Income-Tax, ... on 7 April, 1959

Equivalent citations: 1959 36 ITR 242 SC

Author: Bhagwati

Bench: M Hidayatullah, N Bhagwati, S Dass

JUDGMENT Bhagwati, J.

1. This appeal with leave under section 66A of the Indian Income-tax Act (XI of 1922), hereinafter referred to as "the Act", arises out of the refusal of the Income-tax authorities to register the appellant firm constituted under a deed of partnership dated March 6, 1946, under section 26A of the Act. A reference was made by the Income-tax Appellate Tribunal under section 66(1) of the Act referring the following question of law to the High Court of Assam :

"Whether on the above facts and in the circumstances of the case the Tribunal was right in refusing the claim for registration of the assessee firm under section 26A of the Indian Income-tax Act."

2. The High Court answered the question in the affirmative and hence the appeal.

3. The deed of partnership dated March 5, 1946, was entered into between nine partners, two of whom were Rameshwarlal Ajitsaria, son of Kissendayal Ajitsaria of No. 43/44, Cotton Street, Calcutta, representing the firm of Ramswarup Maliram (of the first part) and Dwarkanath Himatsingka son of Mahadeolal Himatsingka deceased representing the firm of Ghasiram Dwarkadas, Gauhati (of the seventh part). The shares of the partners in the profit and loss of the business were Rs. 0-5-3 for the former and Rs. 0-2-0 for the latter. The work of the partnership was to be supervised and looked after inter alia by Rameshwarlal Ajitsaria, the partner of the first part and in the case of death of any of the of the partners his adult heirs, if they so desired, were entitled to be taken in as partners in place of the deceased and if they were not willing to join, the business was to be carried on by the remaining partners and the deceased partner's heirs were to be paid the amount due to them as on the date of the death of such

4. The appellant firm thereafter made an application under section 26A of the Act for registration of the firm and this application also was signed amongst others by Rameshwar Ajitsaria "for Ramswarup Maliram" and D. N. Himatsingka "representing Ghasiram Dwarkadas". The original deed of partnership was enclosed along with the application.

5. The Income-tax Officer by his order dated June 30, 1951, held that in the larger partnership of the appellant firm the partners constituting the component firms should be taken as individual partners and their shares should therefore have been specified in the deed of partnership. He also pointed out that it was not known what shares the individual partners of the component firms had in the profits of the appellant firm and as the words of section 26A did not permit of any elasticity of construction rejected the application for registration.

6. On appeal taken to the Appellate Assistant Commissioner, the Appellate Assistant Commissioner by his order dated August 23, 1951, relying upon the instructions of the Central Board of Revenue

which were in operation at the relevant period, held that the registration should have been allowed by the Income-tax Officer since the two partner firms were also constituted under the instruments of partnership specifying the individual shares of the partners, but in so far as the application for registration had not been signed by all the partners personally the requirement of rule 2 of the Income-tax Rules made under section 59 of the Act had not been complied with and the application was not in accordance with law. He therefore confirmed the order of the Income-tax Officer refusing registration.

7. The Income-tax Appellate Tribunal, on further appeal, confirmed the order of the Appellate Assistant Commissioner by its order dated February 26, 1953. The Tribunal stated that if it be held that a firm was capable of entering into partnership with another firm, then the individual shares of the partners of such firm must be specified under section 26A of the Act and accordingly held that the Department was right in refusing the registration of the firm.

8. A reference was made by the Tribunal at the instance of the appellant referring the question of law above-mentioned to the High Court for its decision under section 66(1) of the Act. The High Court examined the larger question which was mooted before the Tribunal, viz., "whether a firm is capable of entering into partnership with another firm", and after reviewing various decisions of the High Court and of the Privy Council held that a firm as such was not capable of entering into a partnership with another firm through a partner expressly authorised in that behalf. The High Court, however, after referring to the provisions contained in section 26A of the Act which are mandatory and to the provisions contained in rule 2 of the Income-tax Rules, observed that the application for registration did not also fulfil the essential requirements of the rules; it was neither signed by each of the partners of the constituent firms nor did it specify the individual shares of these partners either in the partnership or i

9. The appellant firm has contended before us that under section 19(2)(h) of the Partnership Act a partner has no power to bind his firm by entering into a partnership on its behalf and if he does so he only becomes a partner in his individual capacity and not the firm. It was, therefore, urged that Rameshwar Lal Ajitsaria and D. N. Himatsingka only in their individual capacity should be deemed to have been the partners in the appellant firm and the rest of the description in the names of the parties as also in the signatures appended by them to the deed as well as the application for registration should be deemed to be a surplusage and both the deed of partnership as well as the application for registration should be treated as satisfying the requirements of law.

10. Whatever be the theoretical aspect of the matter, the appellant firm is, in our opinion, concluded by two circumstances which appear on the record. When the matter came before the Appellate Assistant Commissioner, on appeal, the learned advocate for the appellant firm submitted a written argument in which he contended that the appellant firm had as its partners two partnership firms, viz., Messrs. Ramswarup Mahaliram and Messrs. Ghasiram Dwarkanath represented by their managing partners respectively and seven individuals, and that the shares of the partners of Messrs. Ramswarup Mahaliram and Messrs. Ghasiram Dwarkanath had not been shown individually but collectively. It was further contended that in the application for registration under section 26A of the Act, the shares of the partners of Messrs. Ramswarup Mahaliram and Messrs. Ghasiram

Dwarkanath had also been collectively shown.

11. Even if this contention which was urged on behalf of the appellant firm by its learned advocate be held not to be conclusive against it there was the further fact apparent in the record that profits of the accounting year under consideration were not credited in the books of account of the appellant firm to the two individuals, Rameshwar Lal Ajitsaria and D. N. Himatsingka, but were credited to the two firms whom they were representing in the partnership and there had been no allocation of profits to these two individuals as two individual partners of the appellant firm. This circumstance was, in any event, against the appellant firm and the position could not be saved by any theoretical argument based on section 19(2)(h) of the Partnership Act or otherwise.

12. If the position, therefore, is that two out of nine partners of the appellant firm were the two partnership firms of Messrs. Ramswarup Mahaliram and Messr. Ghasiram Dwarkanath, it is clear that neither the deed of partnership nor the application for registration of the firm filed under section 26A of the Income-tax Act fulfilled the requirements of law and the Department was fully justified in rejecting the application for registration.

13. The matter is really concluded by our judgments in Dulichand Laxminarayan v. Commissioner of Income-tax, and Ravulu Subba Rao v. Commissioner of Income-tax.

14. The appeal, therefore, is devoid of any substance and is accordingly dismissed with costs.

15. Appeal dismissed.