Supreme Court of India
Ratanchand Darbarilal vs Commissioner Of Income Tax, M.P. on 16 August, 1985
Equivalent citations: AIR 1985 SC 1572, (1985) 48 CTR SC 349, 1985 (22) ELT 635 SC, 1985 155 ITR 720 SC, (1985) 4 SCC 183, 1986 (1) UJ 242 SC
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Bench: R Misra, S Mukharji, V Tulzapurkar
JUDGMENT Ranganath Misra, J.

1. These are assessee's appeals by special leave from the common decision of the Madhya Pradesh High Court. on the three references made to it under Section 66 of the Income-tax Act, 1922 ('Act' for short). The year of assessment is 1958-59 corresponding to the accounting year ending with August 28, 1957. One Muralidhar had two sons, Ratanchand and Darbarilal. Ratanchand had two sons, Jaykumar and Abhaykumar, while Darbarilal had one son by name Dhanyakumar. Dhanya-kuniar in his turn had four sons, namely, Keshavkumar, Prasannakumar, Sunilkumar and Sudhirkumar. Branches of Ratanchand and Darbarilal had long separated. On March 1, 1943, a firm by name M/s. Ratanchand Darbarilal was constituted at Katni with Dhanyakumar and Jaykumar as its partners and these two represented their respective families. The firm carried on business in textile goods and in due course acquired substantial properties out of contributions made by the two Hindu Undivided Families. In 1950, a separate retail shop by name Premier Cloth Stores was opened at Katni by the firm. Similarly, in 1953-54, a branch was opened at Satna for handling cloth business. On November 1, 1956, under a partnership deed, the Satna business was taken over by a firm consisting of three partners, namely, Dhanyakumar, Jaykumar and Abhaykumar and the partnership was deemed to have begun from September 9, 1956. Prasannakumar was admitted to the benefits of the partnership as he was then a minor and the firm business at Satna was run in the name of Savai Singhai Ratanchand Darbarilal. On April 1, 1957, under a separate deed the business at Katniboth the main as also the branchwere taken over by a firm of four partners, viz., Dhanyakumar, Jaykumar, Abhaykumar and Keshavkumar. In the partnership deeds of Satna Katni there was no reference to the business at the other place.

2. Separate applications for registration of the two firms in the assessment year 1958-59 were made. The Income-tax Officer rejected both. In rejecting the application of the firm at Satna with which we are concerned in these appeals, he took the view that the business at Satna was only a branch of the main business at Katni. Against the order of the Income-tax Officer under Section 26A of the Act, the assessee appealed to the Appellate Assistant Commissioner. He upheld the refusal by the Income-tax Officer by holding that some of the members of the two Hindu Undivided Families had been introduced as partners without effecting partial partition of the two families. He also made reference to the capital account which stood in the name of the Hindu Undivided Family and had not been divided. He found that there was a capital account in the name of the Hindu Undivided Family and there were no relevant entries showing partial partition. In regard to the Katni business he also found a similar set of facts. According to him since the members of the firm had previously been assessed in the status of Hindu Undivided Family without effecting a partition some of the members of such Family could not form themselves into partnership firms. The assessee appealed to the Tribunal and maintained that the firm at Satna was genuine and the Satna business was totally separate from the business run at Katni from before; there was no need in law for partial partition of

the family before some of the members of the family constituted themselves into a partnership firm. The Tribunal examined the rival contentions at length and came to hold that the Satna business had separate entity and there was no sustainable objection against the claim for registration. The Tribunal found, inter alia :

The assessees have effectively separated the business of Satna from the business of Katni and there is no justification whatsoever for treating the two businesses as one single whole. The aspects emphasized by the Income Tax authorities are not such as to justify the clubbing of the two units. There was nothing to stop the Satna Branch from purchasing a small portion of its requirement from the Katni business without impairing its separate individuality. The financial arrangement made by the two businesses also did not establish the merging of the two units. If the Katni business transferred some of its borrowed moneys to Satna business without charging interest, that might justify disallowance of a part of the interest on borrowed moneys claimed by Katni business. But that could not convert the Satna business into a branch of the Katni business. Similarly, intimation to the banks was not decisive in the matter especially when the existing intimation did not run counter to the Constitution of the Satna firm as claimed. The name of Satna business was not changed and the partner who had authority to operate continued to be a partner in that business. The only remaining consideration was about the introduction of capital. Assuming that it was done in a clumsy manner, we do not see how it can jeopardise the claim of Satna business to be independent. The new entrants, namely, Dhanyakumar (perhaps Keshavkumar) and Prasannakumar could well have been partners admitted to the benefits of partnership without introducing any capital at all. We are, therefore, of the view that the objections raised by the Income Tax authorities to the Satna business being converted into an independent entity are not strong or sufficient to justify the rejection of the assessee's claim. The Satna business has, therefore, to bo taken as an independent unit with its own constitution. The firm running that business has been constituted under a partnership deed with well defined terms and conditions. The Constitution is clearly different from the Constitution of the firm controlling Katni business. We would, therefore, treat the Satna business as separate and distinct from the Katni business. We do not find any valid objection against the registration of the firm owning the Satna business. The profits have been divided in accordance with the provisions of the partnership deed and the entries in the books of accounts of the business were also substantially correct. We would, therefore, direct that the firm owning the Satna business should be registered.

3. The Revenue asked for a reference of certain questions said to be of law under Section 66(1) of the Act. The Tribunal referred the following question only to the High Court :

Whether, on the facts and in the circumstances of the case, M/s. Ratanchand Darbarilal, Satna, was entitled to registration under Section 26A of the Income-tax Act, 1922, for the assessment year 1958-59?

4. Thereupon the Commissionerrespondent before usapplied to the High Court under Section 66(2) for a direction to the Tribunal to state a case and refer the questions as proposed by the Department and the High Court by order dated July 2, 1971, directed the following three further questions also to be referred, namely :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in so interpreting the evidence on record as to come to a finding that the Satna business has to be taken as independent unit with its own Constitution and that it is separate and distinct from the Katni business ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in directing that the firm owning the Satna business should be registered in spite of the fact that the members of the two HUFs entered as partners inter se without their effecting in the first instance a severance of joint status by partitioning either partially or totally, the assets of the respective HUFs ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the profits from the business run in the name and style of M/s. Ratanchand Dar-barilal, Satna, shall be excluded from the total income of M/s. Ratanchand Darbarilal, Katni ?

5. It is agreed at the Bar between counsel for the parties that the most material question for consideration is what was referred by the Tribunal under Section 66(1) of the Act for opinion of the Court. The additional questions would lose their importance and turn out to be academic once the main question is answered one way or the other, Whether a firm is genuine or not is a question of fact as was pointed out by this Court in Landuram Taparia v. C.I.T.44 I.T.R. 521, and it is for the Tribunal to reach a final finding on such question. As a fact, in this case the Tribunal has reached such a finding. Before the High Court this finding has been assailed on the ground that the Tribunal did not take into account all aspects on record while deciding the issue and acted on irrelevant material in reaching this factual conclusion. The High Court referred to several decisions of this Court mainly among them five being Dhirajlal Girdharilal v. Commissioner of Income Tax, Bombay26 I.T.R. 736; Shree Meenakshi Mills Ltd. v. Commissioner of Income Tax31 I.T.R. 28; Umacharan Shaw & Bros. v. Commissioner of Income Tax, West Bengal37 I.T.R. 271; Commissioner of Income Tax v. Sivakasi Match Exporting Co.53 I.T.R. 205; and Commissioner of Income Tax v. S.P. Jain87 I.T.R. 370; in support of the proposition that where the Appellate Tribunal had misdirected itself in its approach, overlooked salient features and evidence, misread evidence or proceeded to interpret a provision of law wrongly and, therefore, reached an erroneous conclusion, the finding of fact reached by the Tribunal would not be binding on the High Court and the Court would have jurisdiction to brush aside that finding and examine the material for reaching its own conclusion. On that basis the High Court entered into an examination of the material, relied upon the statement in the order of the Appellate Assistant Commissioner in regard to the discrepancies in the documents relating to the business and particularly the change of the figure '57' to '56' as also the entries of debit and credit in the accounts of the two firms and held that the firm at Satna was not entitled to registration under Section 26A of the Act, and the remaining questions were answered in favour of the Revenue and against the assessee.

6. The finding of fact by the Appellate Tribunal is ordinarily binding on the Court to which questions of law are referred for decision. Indisputably, situations may arise where the binding effect of the finding is lost and the cases which have been referred to above are instances where this Court has taken the view that the factual conclusion of the Tribunal is not binding on the Court and the Court is free to look into the facts for reaching its own conclusion on the basis of which the question

referred for opinion has to be answered. It is unnecessary to refer to the cases at any length as we are of the view that in the special circumstances in each of these cases the finding had been brushed aside and the Court did take upon itself the responsibility of recording a fresh finding of its own on the foundation of which the reference had to be disposed of.

7. We have extracted in the earlier part of this judgment the conclusions of the Tribunal reached in paragraph 5 of its judgment. When analysed, it shows that every aspect which had weighed with the Income-tax Officer and the Appellate Assistant Commissioner for refusing registration has been dealt with by the Tribunal. The Tribunal did take notice of the fact that the name of the Satna business had not been changed and the same partner who had authority to operate the account earlier continued to exercise authority even when the firm came into existence; the Bank had not been intimated about the firm getting differently constituted but the Tribunal came to hold that not giving such intimation was not decisive especially when the existing information did not run counter to the Constitution of the Satna firm as claimed. The question of introduction of capital also received special consideration in the hands of the Tribunal. On the basis of the material placed and available on the record, the Tribunal did reach the conclusion that the Satna business was an independent one with its own Constitution and the firm had been constituted under a deed with well defined terms and conditions. A further finding was recorded that the Constitution of the Satna firm was different from the Constitution of the firm controlling the Katni business. The Tribunal recorded a further finding that the profits had been divided in accordance with the provisions of the partnership deed and appropriate entries in the books of account had been made. The explanation regarding the change in the date which had been adversely commented upon by the Appellate Assistant Commissioner appears also to have been reconsidered by the Tribunal and the Tribunal came to the conclusion that there was nothing clandestine about it. We were told by Mr. V.S. Desai, learned Counsel for the assessee-appellant, that the accounts were maintained in the local language and according to the Samvat year. There was actually no correction in the originals but when accounts were translated into English to be furnished as required by the Income-tax Officer, the mistake was detected in the copy and to indicate the corresponding year the correction had become necessary. The Tribunal appears to have accepted such explanation to brush aside the finding of the Appellate Assistant Commissioner in this regard.

8. The High Court obviously fell into an error in proceeding on the footing that without a partition or a partial partition some of the members belonging to the Hindu Undivided Family could not constitute themselves into a partnership firm. We do not think this view is correct in law. It is a well settled proposition applicable to Hindu law that members of the joint family and even co-partners can, without disturbing the status of the joint family or the coparcenary, acquire separate property or run independent business for themselves. Small amounts of money had been drawn and credited to the capital account of the partners. There is no finding by the Income-tax Officer or the Appellate Assistant Commissioner that the money which had been drawn was much in excess of the shares due to the members who constituted the partnership firm. It is quite possible, and that is what the Tribunal has indicated, that living within the joint family or being coparceners, the members could draw a part of their interest in the family business and invest the same in their separate business. This actually seems to have been the position here. The conduct of the business at Satna, as found, is without reference to the business at Katni. If the position was otherwise, the dealings would have

been different. We hold that the High Court should not have, in the facts of the case, brushed aside the findings of fact reached by the Tribunal and entered into a re-assessment of the material. On the other hand, it was appropriate to proceed on the basis of the facts disclosed in the statement of the case and examine the question of law on that foundation.

9. This Court in R.C. Hitter & Sons v. C.I.T.36 I.T.R. 194, examined the claim of a firm for registration under Section 26A of the Act and laid down that the following were the conditions to be satisfied in order that a firm may be entitled to registration :

(i) the firm should be constituted under an instrument of partnership specifying the individual share of the partners;

(ii) an application on behalf of and signed by all partners and containing all the particulars as set out in the Rules must be made;

(iii) the application should be made before the assessment of the firm under Section 23 of the Act for that particular year;

(iv) the profits or loss, if any, of the business relating to the accounting year should have been divided or credited, as the case may be, in accordance with the terms of the instrument; and

(v) the partnership must be genuine and must actually have existed in conformity with the terms and conditions of the instrument of partnership in the accounting year.

Once such conditions are satisfied, it is the obligation of the Income-tax Officer under the Act to extend the benefit of registration and allow the firm to enjoy the benefits provided by the Act. The Tribunal did record a clear finding that these conditions were satisfied. In that view of the matter, registration as accorded by the Tribunal was in accordance with law. Once this conclusion is reached, the other questions, as we have already noted, turn out to be academic and need not be answered.

10. We allow the appeals, vacate the judgment of the High Court and restore that of the Tribunal. Parties shall bear their own costs in the High Court as also here.