

CIVIL REFERENCE

Before Bhandari, C. J., and Falshaw, J.

MESSRS PADAM PARSHAD-RATTAN CHAND
OF DELHI,—*Applicant*

versus

COMMISSIONER OF INCOME-TAX, DELHI,
AJMER,—*Respondent*

Civil Reference No. 22 of 1952.

1953

Dec. 3rd

Indian Income-tax Act (XI of 1922) Section 26-A—Instrument of Partnership presented for registration under section 26-A—Instrument alleging the previous existence of partnership on the same terms—Whether partnership can be said to be constituted under the instrument in question.

Held, that when a deed or instrument of partnership is presented for registration under section 26-A, even where the partnership is alleged in the deed to have existed previously on the same terms, this should not be a bar to the registration of the firm, and it should be treated as constituted under the instrument as from the date of the instrument.

Application under section 66 (1) of the Indian Income tax Act, 1922.

Nemo for—Petitioner.

A. N. KIRPAL, for—Respondent

JUDGMENT

Falshaw J. FALSHAW, J. The following question has been referred to us under section 66 (1) of the Income-tax Act by the Income-tax Appellate Tribunal (Delhi Bench) :—

“Whether a firm which comes into existence by oral agreement, is entitled to be registered under section 26A, if on the date of the application for registration the terms and conditions of the partnership have been reduced to writing and the application for registration is accompanied by such an instrument?”

The facts are that the assessee firm Messrs. Messrs Padam Padam Parshad-Rattan Chand of Delhi started Parshad-business as from the 1st of April 1947, and in the Rattan Chand course of the assessment for the year 1948-49 re- of Delhi relating to the account year ending on the 31st of v. March 1948, an application was made for regis- Commis- sioner of tration of a partnership under section 26A (1) on Income-tax, the basis of a partnership deed executed by the Delhi, Ajmer two partners, Rattan Chand and Padam Parshad, and specifying their shares in the partnership, on the 10th of April 1950. This application was dismissed by the Income-tax Officer on the 26th of May 1950, and an appeal against his order was dismissed by the Appellate Assistant Commissioner who apparently had before him two appeals relating both to the assessment years 1948-49 and 1949-50. The ground of dismissal was that the profits had not been distributed between the partners.

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A further appeal was made to the Appellate Tribunal which apparently only related to the year 1948-49. This appeal was also dismissed, but on a different ground, namely that according to the deed itself the partnership business had been carried on since the 1st of April 1947 and, therefore, the partnership could not be deemed to be constituted under an instrument, dated the 10th of April 1950, within the meaning of section 26A. It was also held that such an instrument could certainly not apply to the account year ending in March, 1948. The assessee firm thereupon moved the appellate Tribunal under section 66 (1) with the result that the question set out above has been framed for our decision.

The learned counsel for the respondent has relied on a recent decision of Kapur, J., and myself in *Kalsi Mechanical Works, Nandpur v. Commissioner of Income-tax, Simla* (1), as concluding the matter, but I find that the point involved in

(1) (1953) 24 I.T.R. 353

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that case was somewhat different. The question framed there was :—

“Whether a firm which is alleged to have come into existence by a verbal agreement in June, 1944, is entitled to be registered under section 26A for the purpose of the assessment for 1949-50, where the instrument of partnership was drawn up only in May, 1949, after the expiry of the relevant previous year?”

We held in that case that for the purpose of registration of a firm under section 26A it is necessary that the firm should be constituted by an instrument of partnership, and such a firm as is constituted under an instrument of partnership should have been in existence during the accounting period and should not come into existence during the assessment year, and if it was not in existence during the accounting period, it cannot be registered so as to affect the liabilities of the partners for income-tax accruing during the accounting period. We, therefore, answered the question framed in the negative.

From this it will be seen that all we decided in that case was that an instrument of partnership could not have retrospective effect for the purpose of assessing income-tax, and although the same question arose in the present case, it is clear that the question referred to us is a pure question of law, namely whether when in an instrument of partnership presented for registration under section 26A the previous existence of the partnership on the same terms is alleged, the partnership can be said to be constituted under instrument in question. In other words, the question is not what is the effect of the instrument on the assessee's assessment for the particular year 1948-49, but whether the partnership can be registered so as to have effect in future.

Section 26A provides that application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purpose of the Act. I do not think there can be any doubt about the correctness of the view of the Appellate Tribunal expressed in full in its judgment in the appeal *Messrs. Ram Gulam-Madan Lal v. The Income-tax Officer, G-Ward, Delhi*, which has been printed in full as part of this case that the words "constituted under an instrument" mean "created or formed by a formal deed", but whether the fact that the partners of a firm who jointly executed such a deed choose to allege therein that they have previously been partners for some time on the same terms as those embodied in the deed debars the firm from registration under section 26A is another matter. Obviously, as we held in the case referred to above, the deed or instrument cannot possibly have retrospective effect as regards the income-tax assessment of the firm, but I cannot see any objection to the firms being treated as constituted under the instrument as from the date of the instrument itself. It may be that the partners in these firms act foolishly in alleging the previous existence of the partnership on the same terms in the vain hope of securing retrospective concessions, and in the most literal sense of the words a partnership cannot be said to be constituted under an instrument when admittedly it has been in existence previously. On the other hand the intention of the law is clear, that when partners do draw up an agreement by which their shares in the partnership profits are specified, they are entitled to have the partnership registered under the Act, and thus to have the individual shares of the partners assessed for income-tax, and it seems to me to be an unduly harsh interpretation of the law to say that because the partners say they have been partners previously, they should not be entitled to have the partnership registered even when they have embodied its terms in a deed. I am

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accordingly of the opinion that when a deed or instrument of partnership is presented for registration under section 26A, even where the partnership is alleged in the deed to have existed previously on the same terms, this should not be a bar to the registration of the firm, and it should be treated as constituted under the instrument as from the date of the instrument. I would accordingly answer the question framed for our decision in the affirmative, but since the answer to the question can make no difference to the assessment of firm Padam Parshad-Rattan Chand for the year 1948-49 out of which it has arisen, I would order that the parties be left to bear their own costs.

BHANDARI, C.J.—I agree.

APPELLATE CIVIL

Before Harnam Singh, J.

SHRI B. D. MEHTA AND OTHERS,—Defendants-Appellants

versus

SHRI F. M. DEBOO,—Plaintiff-Respondent

Regular Second Appeal No. 258 of 1953

1953

Dec. 4th

The East Punjab Urban Rent Restriction Act (III of 1949)—Sections 8 and 13 (2) (1)—Payment into Court of arrears of rent under section 13 (2) (1)—Whether such payment is payment to the landlord within the meaning of section 8—Interpretation of statutes—Construction by introducing fiction of law—Whether permissible.

Held, that payment of arrears of rent under the proviso to section 13 (2) (i) of the Act is not for all purposes and all occasions a payment to the landlord. Payment into Court under section 13 (2) (1) is not payment to him within the meaning of section 8 of the Act until he receives the payment.

Held also, that in construing statutes the Court would not endure that a mere form or fiction of law introduced for the sake of justice should work a wrong contrary to the real truth and substance of the thing.