

proceedings and for recovery of any tax from the estate of the deceased in the hands of the legal representative. The Income Tax Officer followed the procedure correctly as provided by section 159 of the Act and complete the proceedings.

(4) Section 154 of the Act authorises the Income Tax Authority, referred to in section 116 of the Act, to rectify any mistake apparent from the record and amend the order accordingly. The slight mistake, if any, could be rectified under this provision. The law framers were not satisfied with this provisions alone and inserted Section 292-B of the Act, which came into effect from 1st October, 1975. It *inter alia* provided that assessment made in pursuance of any of the provisions of the Act shall not be invalid nor deemed to be invalid merely by reason of any mistake, defect or omission in the assessment if the assessment is in substance and effect in conformity with or according to the intent and purpose of the Act. As already noticed, the entire proceedings were conducted after death of the original assessee in accordance with law. After death the legal representative is also deemed to be assessee. Therefore, the title of the order, which was not happily worded would not make the assessment order invalid as was sought to be declared by the Appellate Assistant Commissioner." The Tribunal was fully justified in restoring the order of the assessment in exercise of its powers under section 292-B of the Act.

(5) The learned counsel for the assessee has cited some cases to support the order of the Appellate Assistant Commissioner but none of those cases is close or relevant to the facts of this case, and therefore, it would be futile to notice or discuss them.

(6) For the reasons recorded above, we answer the question in the affirmative, that is, in favour of the Revenue and against the assessee but with no order as costs.

S. C. K.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX. AMRITSAR,—*Applicant.*

versus

M/S. JAGJIT SINGH JASPAL SINGH, AMRITSAR,—*Respondent.*

Income Tax Reference No. 79 of 1980.

November 22, 1988.

Income Tax Act (XLIII of 1961)—Ss. 256(1), 185, Form 11, 11-A—Income Tax Rules, 1962—Rl. 22—Partnership firm—Addition of

Commissioner of Income Tax, Amritsar v. M/s. Jagjit Singh Jaspal Singh, Amritsar (G. C. Mital, J.)

Fourth partner—No change in the Constitution of firm during previous year—Application for registration made in Form 11—Firm name of Branch office mentioned for registration—All partners signing such application—Whether application suffers from defect—Whether Income Tax Officer could refuse registration.

Held, that during the previous year there was no change in the constitution of the firm or the shares of the partners before the date of application for registration. Hence, the application was rightly made in Form 11 and the decision of the Income Tax Officer that the application should have been made in Form 11-A, is clearly illegal. (Para 6).

Held, that the firm name is of no importance and it is the partners and their shares which are relevant for considering the genuineness of the firm for the purpose of registration, since there was no doubt about the constitution of the firm, the mere fact that by clerical mistake or omission, instead of writing the firm name of the head office, the firm name of the branch office was mentioned in the application, it provided no justification to the Income Tax Officer to refuse registration. The registration is not of the firm name but of the firm. The firm is compendious of the partners, all the partners signed and their names have been clearly mentioned with the shares etc., there was no defect in the application and the Income Tax Officer was duty bound to register the partnership. (Para 9).

Reference under section 256(1) of the Income-tax Act, 1961 by the Commissioner of Income-tax, Amritsar, requires the Tribunal to refer two questions of law, arising from Tribunal's order in I.T.A. No. 703(ASR)/1977-78, for assessment year 1974-75.

- “1. *Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that there was no defect in the application for registration made by the assessee-firm in Form No. 11 in respect of the assessment year 1974-75 ?*”
- “2. *Whether, on the facts and in the circumstances of the case, the Tribunal is right in-law in directing the Income-tax Officer to entertain the application filed by the assessee firm in Form No. 11 as a valid application and to process it for registration ?*”

L. K. Sood, Advocate. for the appellant.

B. S. Gupta, Sr. Advocate with Sanjay Bansal. Advocate, for the respondent.

ORDER

Gokal Chand Mital, J.

(1) M/s. Jagjit Singh Jaspal Singh, the assessee, applied in Form No. 11 for registration of the firm for the assessment year 1974-75 on the basis of application filed on 11th January, 1974. Earlier thereto, in a partnership deed, dated 10th May, 1968, there were three partners of the firm but,—*vide* partnership deed, dated 1st April, 1973, a fourth partner was added with effect from 1st April, 1973. During the accounting period from 1st April, 1973 to 31st March, 1974, there was no change in the constitution of the firm. The firm name of Head Office was M/s. Jagjit Singh Jaspal Singh, whereas the name of the Branch Office was M/s. Jagjit Woollen Mills. Both the firms belong to the four partners and were covered by partnership deed, dated 1st April, 1973.

(2) The Income Tax Officer found two defects in the application : (1) that the application should have been in Form 11-A and (2) that instead of giving the firm name of the Head Office, the firm name of Branch Office was mentioned for the purpose of registration. He gave opportunity under section 185(2) of the Income Tax Act, 1961 (hereinafter called the Act) to the assessee to rectify the defects and when the assessee failed to remove the defects within a period of one month, the registration of partnership was refused. The assessee remained unsuccessful before the Appellate Assistant Commissioner but on further appeal to the Appellate Tribunal, it was concluded that both the defects pointed out were not defects in the eye of law and the Income Tax Officer was not justified in rejecting the assessee's application for registration. As a result, the order refusing registration was set aside with a direction to the Income Tax Officer to entertain the application as a valid one and to process it for registration as laid down in section 185(1) of the Act.

(3) At the instance of the revenue, the Income Tax Appellate Tribunal, Amritsar, has referred the following two questions for the opinion of this Court.

- "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that there was no defect in the application for registration made by the assessee-firm in the Form No. 11 in respect of the assessment year 1974-75 ?

Commissioner of Income Tax, Amritsar v. M/s. Jagjit Singh Jaspal Singh, Amritsar (G. C. Mital, J.)

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in directing the Income Tax Officer to entertain the application filed by the assessee firm in Form No. 11 as a valid application and to process it for registration ?”

(4) Section 185 of the Act prescribes the procedure of receipt of application for registration of a firm. If the firm is found to be genuine, registration would be granted but if not, then registration would be refused. Sub-section (2) provides where the Income Tax Officer finds some defects, opportunity is to be granted for rectifying the defects within a period of one month from the date of such intimation and if the defect is not rectified, it will be open to him to reject the application.

(5) Rule 22 of the Income Tax Rules, 1962, prescribes the forms for filing the application for registration of a firm. Sub-rule (2) provides that if there is a change in the constitution of the firm or shares of the partners during the previous year before the date of the application, the application has to be made in Form 11-A and where no change in the constitution of the firm or shares of the partners has taken place during the previous year before the date of the application, the application is to be made in Form 11. It is not disputed before us that application for registration of a new firm has to be made in Form 11.

(6) Adverting to the facts of the case, a new firm consisting of four partners (earlier thereto the partnership consisted of three partners out of them with the same name) name into being,—*vide* partnership deed, dated 1st April, 1973 with effect from 1st April, 1973, the application for its registration was filed on 11th January, 1974 in Form 11. The assessment year in question is 1974-75 and the previous year would be 1973-74. During 1973-74, the previous year, there was no change in the constitution of the firm or the shares of the partners before the date of application for registration. Hence, the application was rightly made in Form 11 and the decision of the Income Tax Officer, that the application should have been made in Form 11-A, is clearly illegal.

(7) The other objection of the Income Tax Officer was also not well founded. Section 2(23) of the Act defines “Firm”, “Partner”

and "Partnership" as having the meanings respectively assigned to them in the Indian Partnership Act, 1932, apart from slight deviation considering a minor to be a partner, who is admitted to the benefits of the partnership, is considered partner for the purpose of the Act. Under the general law, "Firm" is different from "Firm Name". Firm name is merely an expression whereas the firm is a compendious of the persons who agree to carry on business in partnership and such persons are called partners. In this behalf, the following observations of the Supreme Court in *Duli Chand Laxminarayan v. Commissioner of Income Tax, Nagpur* (1) deserve to be noticed :—

"It is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid notice and extended a limited personality to a firm. Nevertheless, the general concept of partnership, firmly established in both systems of law, still is that a firm is not an entity or "person" in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. According to the principles of English jurisprudence, which we have adopted, for the purposes of determining legal rights "there is no such thing as a firm known to the law" as was said by James, L.J., in *Ex parte Corbett*: In re shand. In these circumstances to import the definition of the word "person" occurring in section 3(42) of the General Clauses Act, 1897, into section 4 of the Indian partnership Act, will according to lawyers, English or Indian, be totally repugnant to the subject of partnership law as they know and understand it to be. It is in this view of the matter that it has been consistently held in this country that a firm as such is not entitled to enter into partnership with another firm or individuals."

(8) The matter directly came up for consideration before the Allahabad High Court in *Delight Stores v. Income Tax Officer*,

(1) (1956)29 I.T.R. 535 at Page 541.

Commissioner of Income Tax, Amritsar v. M/s. Jagjit Singh Jaspal Singh, Amritsar (G. C. Mital, J.)

E—Ward, Lucknow, (2). There the partners and their shares continued to be the same but the name of the firm was changed from “Whiteways General Stores” to “Delight Stores”. On account of the change of the firm name, the application for registration of the firm was declined by the Income Tax Officer and that decision was reversed by the High Court with the following observations :—

“Though it may be convenient for a partnership to have a firm name for many purposes, it does not follow that the firm name is an essential ingredient of the constitution of the firm and it is possible for a firm to carry on business even without assuming a firm name. It cannot, therefore, be held that there has been a change in the constitution of a firm by the mere fact that the name of the firm has been changed and the Income-Tax Officer cannot refuse to renew the registration of a firm under section 184(7) of the Income-Tax Act, 1961, on the ground that the name of the firm has been changed.”

(9) In the present case the facts are on more firm footing in favour of the assessee as compared to the facts of the Allahabad case. Here, the firm name of the head office was mentioned, although the application was signed by all the partners by giving the firm name of the branch office, but in the body of the application it was clearly mentioned that the firm name of the head office was M/s. Jagjit Singh Jaspal Singh and that of the branch office was M/s. Jagjit Woollen Mills. Once the firm name is of no importance and it is the partners and their shares which are relevant for considering the genuineness of the firm for the purpose of registration, since there was no doubt about the constitution of the firm, the mere fact that by clerical mistake or omission, instead of writing the firm name of the head office, the firm name of the branch office was mentioned in the application, it provided no justification to the Income Tax Officer to refuse registration. The registration is not of the firm name but of the firm. The firm is compendious of the partners, all the partners signed and their names have been clearly mentioned with the shares etc., there was no defect in the application and the Income Tax Officer was duty bound to register the partnership.

(10) Before we answer the two questions on the basis of our aforesaid discussion, one matter deserves to be kept in view. After raising objections, the Income Tax Officer gave opportunity to the assessee and within the prescribed period of one month, the corrections was not made. The correction was sought to be made after the expiry of the period and the Income Tax Officer declined registration also on the ground that correction was made beyond the prescribed period and the prayer for correction was not signed by the authorised representative. Once come to the conclusion that the application for registration was in order, the question of directing the assessee to remove the defects, did not arise and consequently the question of making the correction within time or by an authorised representative also did not arise. We are proceeding to decide this matter on the basis of the original application ignoring the application in which the defects were removed because the assessee is entitled to succeed on the basis of its original application. If the assessee was not to succeed on the basis of its original application, then the other question may have arisen for consideration.

(11) In view of the above, we answer both the questions in the affirmative, in favour of the assessee and against the revenue. The assessee will have its costs from the revenue.

S. C. K.

Before S. S. Kang and N. C. Jain, JJ.

AMARJIT SINGH,—Appellant

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 213—SB of 1985.

July 18, 1988.

Punjab Milk Products Control Order, 1966—Essential Commodities Act (X of 1955)—Ss. 3 and 7—Control order banning manufacture and sale of milk products during the period April, 15 to July, 15—Violation of Control Order—Offence committed during the period of ban—Whether prosecution can be continued thereafter—Nature of Punjab Control Order—Whether a temporary measure—Distinction between Punjab Control Order and Haryana Control Order—Stated.