

Commissioner of Income Tax *v.* Hardit Singh Pal Chand  
(D. S. Tewatia, J.)

the learned Rent Controller to decide the issue regarding the quantum of rent and then to proceed in accordance with law. The parties through their counsel are directed to appear before the Rent Controller on November 9, 1978.

H. S. B.

Before D. S. Tewatia and A. S. Bains, JJ.

COMMISSIONER OF INCOME TAX—*Applicant.*

*versus*

HARDIT SINGH PAL CHAND—*Respondent.*

*Income Tax Reference No. 4 of 1974.*

October 26, 1978.

*Income Tax Act (LXIII of 1961)—Sections 184 and 185—Punjab Excise Act (I of 1914)—Sections 26 and 58—Punjab Liquor License Rules 1956—Rules 3, 6, 7 and 37(26)—Liquor License granted to individuals under the provisions of Excise Act and Rules—Such individuals entering into partnership with strangers—Names of the strangers not endorsed on the license—Such partnership—Whether entitled to registration under the Income Tax Act.*

*Held*, that the sum and substance of the Punjab Excise Act 1914 and the rules framed thereunder is that no person shall possess beyond permissible quantity of intoxicant i.e. liquor for consumption, or sell without license. If the licensee is a firm, it is prohibited from taking new partners without the approval of the concerned authorities. The rules also prohibit anybody to sell on behalf of the licensee unless the name of such a person is approved and endorsed on the license. By virtue of the conditions in the license to the effect that the license is granted subject to the provisions of the rules, the aforesaid provisions stand incorporated as conditions in the license. If the names of the strangers with whom the licensee had entered into partnership were not endorsed on the license, it is a violation of sub-rule 26 of rule 37. In such a situation he may have complied with all the requisites under the Partnership Act or the provisions of the Contract Act for the purposes of entering into a valid contract of partnership, but the same was not entitled to be registered for the purpose of Income Tax under sections 184 and 185 of the Income Act 1961 as it carried on the business of

possessing and selling liquor in violation of provisions of the Excise Act and the Rules framed thereunder as also of the conditions of the license. (Paras 7 and 8).

*Reference under section 256(1) of the Income Tax Act, 1961 made by the Income-tax Appellate Tribunal (Chandigarh Bench) for the opinion of this Hon'ble High Court on the following question of law arising out of its order dated 5th April, 1973, passed in R.A. No. 19 of 1973-74 in I.T.A. No. 1475 of 1970-71.*

*Assessment year 1964-65.*

*“Whether on the facts and in the circumstances of the case, the Tribunal was justified in allowing registration to the firm.?”*

D. N. Awasthy with B. K. Jhingan, Advocate, for the petitioner.

Nemo, for the respondent.

D. S. Tewatia, J. (Oral)

(1) Two persons, Hardit Singh and Pal Chand had secured liquor licence from the Punjab Excise authorities for the whole-sale vend at Sirhind and for retail vend at Sirhind Mandi, Sirhind City, Jalbehra and Madhaur. After securing the licence and the contract to carry on the aforesaid business the said two partners joined hands with eight other persons, namely, Vinod Singh, Mulkh Raj, Kamal Dev, Hardev Singh, Mehar Singh, Rehman Singh, Ramji Dass, Maharaj Krishan, and formed partnership firm known as M/s Hardit Singh-Pal Chand & Co., Wine Contractors, Sirhind. The firm applied for registration with the Income-tax authorities under sections 184 and 185 of the Income-tax Act, 1961 (hereinafter referred to as the Act). The Income-tax Officer denied registration. On appeal, the Tribunal allowed the registration. The Commissioner of Income-tax sought the following question to be referred to this Court, which the Tribunal did:—

*“Whether on the facts and in the circumstances of the case, the Tribunal was justified in allowing registration to the firm.”*

Commissioner of Income Tax v. Hardit Singh Pal Chand  
(D. S. Tewatia, J.)

---

(2) As would be clear from the order of the appellate Tribunal on the appeal of the respondent-assessee, it concluded the case against the revenue on the strength of the Supreme Court decision reported in *Jerr and Co. v. Commissioner of Income-Tax, U.P.* (1). It would be clear from the following passage from its order:—

“After hearing both the parties, we are of the view that the ratio laid down by their Lordships of the Supreme Court in *Jerr & Co.’s* case quoted above fully cover the assessee’s case and when there is a judgment of the Supreme Court on an issue identical to the one before us the judgment of the Supreme Court takes precedence over a judgment of the High Court because a judgment of the Supreme Court is the law of the land. With utmost respect to their Lordships of the Punjab & Haryana High Court for their views expressed in the two citations referred to above, we follow the judgment of their Lordships of the Supreme Court in *Jerr and Co.’s* case and hold that the assessee firm is entitled to registration. We, therefore, direct that the registration should be allowed.”

(3) Learned counsel for Revenue, D. N. Awasthy, has canvassed that the Supreme Court decision in question is clearly distinguishable in that there the only question was as to whether Rule 322 framed under the U.P. Excise Act governed the licence granted to one of the partners of the assessee company in form F.L. 2 under the U.P. Excise Manual. It was held that said rule did not govern the licence and the licence contained no condition which prohibited the holder thereof from entering into partnership with strangers. The condition referred to in the licence merely provided that the licence shall not be subject to transfer. It was held that since the licence carried no prohibition against the holder thereof entering into a partnership with the strangers the question, whether the partnership was illegal, did not arise.

(4) It has been maintained by the learned counsel for the revenue that the provisions of the Excise Act and the rules, which shall be presently mentioned, clearly prohibit the possession of liquor and its sale by any person other than a licensee and that the licence granted in form ‘L’ carries an express condition which provides that

---

(1) 79 I. T. R. 546.

the licence is granted subject to the provisions of Punjab Liquor Licence Rules, thus importing all the restrictions and prohibitions contained in the rules into the conditions of licence.

(5) Section 24 of the Punjab Excise Act, 1914 (hereinafter referred to as the Excise Act) provides that no person shall have in his possession any quantity of any intoxicant in excess of such quantity as the State Government, has, under section 5, declared to be the limit of retail sale except under the authority and in accordance with the terms and conditions of a licence. Section 26 *inter alia* provides that no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence. Section 58 enabled the State Government to make rules for the purpose of carrying out the provisions of the Excise Act or any other law for the time being in force relating to excise revenue.

(6) In exercise of power conferred under section 58 of the Excise Act, the Punjab Government promulgated the Punjab Liquor License Rules, 1956. Rule 3 thereof envisages granting of licence to a certain licensee in respect of certain premises. Rule 4 provides that licence may be granted only to—

- (a) an individual,
- (b) .. .. .
- (c) .. .. .
- (d) a partnership or firm.

Rule 6 provides that when a licence is granted to a partnership or firm not incorporated under any Act, all the individuals comprising the partnership or firm should be specified on the license. Rule 7 enables the original partners to take a new partner provided the proposed partner is eligible under the Punjab Intoxicants License and Sale Orders or these rules, in which case he shall be responsible for all obligations incurred or to be incurred under the license during the period of its currency as if it had originally been granted or renewed in his name. Sub-rule (26) of Rule 37 prohibits the licensee from allowing any person to conduct sales in his behalf unless the name of such person has been previously submitted to the Collector for approval and endorsed by him on the license.

Commissioner of Income Tax v. Hardit Singh Pal Chand  
(D. S. Tewatia, J.)

---

(7) The sum and substance of the provisions of the Excise Act and the rules extracted above is that no person shall possess beyond permissible quantity of intoxicant i.e. liquor for consumption or sell without license. If the licensee is a firm, it is prohibited from taking a new partner without the approval of the concerned authorities. The rule also prohibits anybody to sell on behalf of the licensee unless name of such a person is approved and endorsed on the license.

(8) By virtue of the conditions in the license to the effect that the license is granted subject to the provisions of the rules, the aforesaid provision of rules stands incorporated as conditions in the license. There is the clear finding by the Tribunal that the names of eight persons stranger to the license were not endorsed on the license in terms of Rule 37, Sub-rule (26). In such a situation, the partner may have complied with all the requisites under the Partnership Act or the provisions of the Contract Act for the purposes of entering into a valid contract of partnership but the same was not entitled to be registered for the purpose of Income-tax under sections 184 and 185 as it carried on the business of possessing and selling liquor in violation of provisions of the Punjab Excise Act and rules framed thereunder as also of the conditions of the license.

(9) The present case is clearly distinguishable from *Jerr & Co.'s* case for the license to which reference has been made by their Lordships did not carry the kind of conditions like those in the present case. To the case in hand the decisions of this Court reported in *Commissioner of Income-tax v. Benarsi Dass and Company* (2) and *Lal Chand Mohan Lal, Fazilka v. Commissioner of Income-Tax, Punjab* (3), aptly apply. The ratio of these decisions is clearly attracted and these have been rightly followed by the Income-tax Officer and the appellate Assistant Commissioner.

(10) The assessee respondent had, at one stage or the other, also relied upon *Commissioner of Income-Tax, Patna v. K. C. S. Reddy* (4) and *Oudh Cocogem and Provision Stores v. Commissioner of*

---

(2) 44 I.T.R. 835.

(3) 65 I.T.R. 418.

(4) 38 I.T.R. 560.

*Income-Tax, U.P.* (5). The facts and situations involved in these two cases are entirely different and these two cases are clearly distinguishable on that account. In these cases, it was clearly held that the firm did not engage in any illegal activity.

(11) Mr. D. N. Awasthy, learned counsel, in all fairness brought to our notice the Division Bench decision in *Commissioner of Income-Tax, Patiala v. Gian Chand & Co.* (6), not because of its direct bearing on the present case but because of an *abiter dicta* to the effect that the Supreme Court decision in *Jerr & Co.'s case* (supra) had shaken the force of this Court's earlier two decisions reported in *Benarsi Dass and Company's case* and *Lal Chand Mohan Lal, Fazilka's case* (supra). That was a case of the firm whose five partners obtained license in their separate names from the Fisheries Department of the Punjab Government for fishing in the Public waters. They joined other four persons as partners in the same firm. The partnership had applied for registration under the Income-tax Act.

(12) The question posed was as to whether the partnership formed had become illegal firm by taking four others as partners. In the Fisheries Act there was no such prohibition regarding selling or possessing fish as in the Excise Act or the Rules. The only prohibition envisaged under Section 3 of Punjab Fisheries Act, 1914, is that nobody would engage in fishing in public waters without license. Clause (b) of sub-section (3) of Section 3 prescribed seasons during which killing of fish was prohibited. Clause (c) of sub-section (3) of Section 3 prohibited killing of fish below the prescribed minimum weight. Section 4 empowered the State by notification to prohibit selling of fish in any specified areas in contravention of clauses (b) and (c) of sub-section (3) of Section 3 of the Act.

(13) The Fisheries Rules did not contain any rule prohibiting the entering into partnership in so far as the fishing licenses are concerned.

(14) The matter came to the High Court on a reference at the instance of the Commissioner of Income-Tax on behalf of the revenue.

---

(5) 69 I.T.R. 819.

(6) 87 I.T.R. 113.

Harchand Singh v. State of Punjab (S. S. Dewan, J.)

Reliance was placed on the two Division Bench decisions of this Court reported in *Benarsi Dass and Company's case* (supra) and *Lal Chand Mohan Lal, Fazilka's case* (supra). It was pointed out that the decisions pertain to opium licenses and then it was observed in passing that the correctness thereof had been put in jeopardy by Supreme Court decision in *Jerr & Co.'s case* (supra).

(15) To the extent the Bench relied on *Jerr & Co.'s case*, it was right in that like the *Jerr & Co.'s case* the license contained no condition prohibiting the licensee from entering into partnership. There was no rule in the Punjab Fisheries Rules prohibiting the licensee from entering into partnership in regard to the fishing licenses. But having held so it was unnecessary to examine the correctness of this Court's aforesaid earlier decisions which were rendered in the light of the Opium Act and Rules, the conditions and prohibitions contained wherein are identical with those contained in the Excise Act and rules thereunder.

(16) For the reasons stated, we answer the reference in the negative i.e. against the assessee and in favour of the Revenue. Since the assessee is not represented before us, we make no order as to costs.

H. S. B.

Before Bhopinder Singh Dhillon and S. S. Dewan, JJ.

HARCHAND SINGH—Appellant.

versus

STATE OF PUNJAB—Respondent.

Criminal Appeal No. 1394 of 1975.

October, 26, 1978.

*Indian Evidence Act (I of 1872)—Section 105—Indian Penal Code (XLV of 1860)—Section 302—Criminal trial—Distance from which gun shot fired—Doctor's opinion in conflict with ocular evidence—Doctor having meagre knowledge of nature of fire-arm injuries—Probative value of ocular evidence—Whether affected—*