

Before S. P. Goyal & M. M. Punchhi, J.

COMMISSIONER OF INCOME-TAX, PATIALA,—Appellant.

*versus*

M/S SHAM LAL KEWAL KRISHAN, LIQUOR CONTRACTORS,  
—Respondents.

Income Tax Case No. 28 of 1977.

May 8, 1985.

*Income Tax Act (XLIII of 1961)—Sections 184, 185 and 256(2)—Partnership factually coming into existence and evidenced by a deed—Purpose of the firm was to carry on licensed activities—Some activity out of several activities turned out to be illegal—Such illegal activity—Whether renders the constitution of the firm illegal—Such firm—Whether disentitled to registration—Advisory jurisdiction of the High Court—Whether could be invoked to correct errors of fact.*

*Held*, that the partnership had legally and factually come into existence and there was a partnership deed in evidence thereof. The purpose of the partnership was to carry on licensed activities. The mere fact that some activity out of several activities turned out to be illegal did not render the constitution of the firm illegal or disentitle it to registration. It had to be ascertained by the authorities whether in fact the registered firm had taken birth as envisaged under section 184 of the Income Tax Act 1961. The authorities found that it had come into existence. The Advisory jurisdiction of the High Court cannot be invoked to correct any errors of fact or even of inferences in respect of a given set of facts.

(Para 3)

*Petition Under Section 256(2) of the Income-tax Act, 1961—Assessment year 1971-72, praying that this Hon'ble Court be pleased to direct the Tribunal to refer the following question of law to the High Court which arises out of the aforesaid order of the Tribunal:—*

*“Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in upholding the direction of the Appellate Assistant Commissioner of Income-tax to the Income-tax officer to grant registration to the assessee-firm for assessment year 1971-72”.*

Ashok Bhan, Senior Advocate, with Ajay Mittal, Advocate, for the Petitioner.

#### JUDGMENT

M. M. Punchhi, J.

(1) By two separate applications under section 256(2) of the Income-tax Act, 1961 (for short, the Act), the Commissioner of

Income-tax, Patiala, has raised the following question of law:—

“Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in upholding the direction of the Appellate Assistant Commissioner of Income-tax to the Income-tax Officer to grant registration to the assessee-firm for assessment year 1971-72 (and in the other case 1972-73)?”.

pertaining to two succeeding assessment years said to arise out of the orders of the Income-tax Appellate Tribunal in the case of the respondent-firm. These are subject matter of Income-tax Case No. 28 of 1977 and Income-tax Case No. 1 of 1978 respectively.

(2) The assessee-firm was constituted with effect from April 1, 1970. A partnership deed in regard thereto was executed on April, 6, 1970. The object of the firm was to run a liquor contract under licenses obtained from the Government. Under those licenses, the assessee could undertake wholesale vending as also retail sale within specified areas. The assessee applied for registration of the firm under section 184 of the Act, specifying therein the individual shares of the partners as allotted in the instrument of partnership, which was appended along with. During the financial year 1970-71 relevant to the assessment year 1971-72, the business premises of the assessee were searched on November 29, 1970. Books of account for the period from April 1, 1970, till the date of search were seized. During the course of proceedings under section 132(5) of the Act, the assessee produced second set of accounts called set No. 2, wherein were recorded certain transactions not finding any place in the books of accounts seized on November 29, 1970, referred to as set No. 1. Those accounts disclosed that the assessee had violated the provisions of the Punjab Excise Act and the rules made thereunder. The Income-tax Officer recorded the statement of one of the partners of the assessee-firm to come to such conclusion. The assessee, though assessed on the status of a firm, was denied the benefit of registration. The Appellate Assistant Commissioner, however, reversed that view, holding that the contract of partnership as such between the partners was not illegal and that there was no intention to disobey the law or to commit any illegal act at the time when the partnership was entered into. The appeal of the Revenue was dismissed by the Tribunal holding as following :—

“13. The assessment in the case has been completed on the basis of the activities of the respondent-partnership-firm

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which impliedly means acceptance on the part of the revenue the existence of a firm as indicated in the instrument of partnership dated 6th April, 1970. There is no controversy in this case that any of the requirements as laid down under section 184 were lacking in the case. On the contrary, the partnership-firm for which the assessee claimed registration benefit of section 185, is evidenced by a regular deed in which the individual shares of the partners are specified and further the allocation has been made in accordance with the partnership agreement. Since the application under rules was also made by the firm in time and when the genuineness of the partnership was not doubted, there was absolutely no justification for the taxing authorities to have attempted to take support from the Indian Contract Act and the violations of the Excise (Punjab) Act to deny section 185 benefits to the respondent-firm. On the facts before us, we hold that the partnership agreement on the basis of which registration was sought was not formed for any unlawful purpose. On the contrary, the purpose of the partnership was lawful activities and such activities in fact were carried out. May be that some violations were committed by the firm or its partners against the Excise (Punjab) Act but the provisions of such Act were sufficient to take care of any violation under that particular statute and the I. T. Act, 1961 could not and should not be brought into play for those violations.

14. The ingredient of mutual agency which is vital to the partnership agreement is also not challenged by the revenue and, as a matter of fact, the statement of one of the partners having been relied by the Income-tax authorities, gave a clear indication that such element of mutual agency was very much there in running the partnership affair of the respondent-firm."

(3) The Tribunal has found as a fact that the partnership had legally and factually come into existence. There was a partnership deed in evidence thereof. The purpose of the partnership was to carry on licensed activities. The mere fact that some activity out of several activities turned out to be illegal did not render the constitution of the firm illegal or disentitle it to registration and, in

the succeeding year, renewal thereof. It had to be ascertained by the authorities, and rightly, whether in fact the registered firm had taken birth as envisaged under section 184 of the Act. The Appellate Assistant Commissioner held that it had come into existence and the Tribunal endorsed that view. The advisory jurisdiction of this Court cannot be invoked to correct any errors of fact or even of inferences in respect of a given set of facts. This Court in *Commissioner of Income-tax, Patiala v. Suraj Bhan & Co.*, (1), in somewhat similar circumstances, declined such a prayer when the assessee-firm therein was additionally found to indulge in speculation business, an activity unlawful, which did not debar the Income-tax Tribunal to hold as a fact that the subsistence of the partnership instrument evidencing the creation of the firm and the element of mutual agency, justified the registration of the firm. The case cited by the Revenue in *Commissioner of Income-tax, Patiala-I v. Hardit Singh Pal Chand & Co.* (2), is clearly distinguishable, as the activity had been carried on by a re-constituted firm whose very existence at the outset was not recognised under the rules framed under the Punjab Excise Act, yet the business of possessing and selling liquor was carried on by the firm in violation of the provisions of the Punjab Excise Act and the rules framed thereunder, as also the conditions of the licence, right from its inception.

(4) The upshot of the above discussion is that these are not cases for the issuance of *mandamus* as asked for. Accordingly the prayer is declined. No costs.

N.K.S.

Before M. M. Punchhi, J.

SARDARI LAL,—Petitioner.

versus

NARSINGH BAHADUR AND ANOTHER,—Respondents.

Criminal Misc. No. 445-M of 1985.

May 14, 1985.

*Code of Criminal Procedure (II of 1974)—Section 145—Dispute regarding possession of land—Breach of peace apprehended—Magistrate taking cognizance on a police report—One of the parties asserting during the proceedings that no apprehension of breach of peace*

(1) (1983) 144 I.T.R. 943.

(2) (1979) 120 I.T.R. 289.