

(4) I am, therefore, satisfied that the entire matter deserves to be gone into afresh and adjudicated upon by the trial Court. Thus I set aside the judgment under appeal and send the case back for retrial and decision afresh as envisaged by Order 41 Rule 23A, C.P.C. The parties would be allowed to lead fresh evidence, if they so choose, in support of their respective stands. I, however, pass no order as to costs.

R. N. R.

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

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

versus

M/S. SUNIL THEATRE,—*Respondent.*

Income Tax Reference No. 48 of 1985.

February 2, 1989.

Income Tax Act (XLIII of 1961)—Ss. 77(1) and 256(1)—Unregistered firm becoming registered firm in subsequent years—No change in Constitution of firm—Loss incurred by un-registered firm—Whether can be carried forward in subsequent years.

Held. that after considering the provisions of S. 77(1) of the Income Tax Act, 1961 and other relevant provisions, we are of the opinion that the Karnataka High Court has come to the correct conclusion on the interpretation of S. 77(1) of the Act, that if an unregistered firm becomes registered firm in the subsequent years, the loss incurred by the un-registered firm can be carried forward in the subsequent years inspite of the registration.

(Para 2).

Held. that there is no change in the constitution of the firm and, therefore, the word 'firm' used in the end of S. 77(1) of the Act would include both, registered as well as un-registered firm. The registration of the firm does not take away the benefit, which would have accrued to it under S. 77(1) of the Act, if it had remained un-registered.

(Para 2).

Commissioner of Income Tax, Jalandhar v. M/s. Sunil Theatre
(G. C. Mital, J.)

Reference under Section 256(1) of the Income-tax Act, 1961, by the Income-tax, Appellate Tribunal (Amritsar Bench) arising out of the order, dated 20th March, 1985, in I.T.A. No. 465/ASR/1984, for the opinion of the Hon'ble High Court on the following question of law :—

“Whether on the facts and in the circumstances of the case, the ITAT is right in law in upholding the finding of AAC that the assessee is entitled to set off the loss against the income of the firm in subsequent years in view of provisions of section 77(1) of the I. T. Act, 1961 ?”

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

R. C. Setia, Advocate. for the respondents.

ORDER

Gokal Chand Mital, J.

(1) M/s. Sunil Theatre, the assessee, was an un-registered firm for the assessment year 1978-79. When assessment for the aforesaid year was being made by the Income Tax Officer, it was found that there was no loss but he disallowed carry forward of the loss for the assessment year 1979-80 in view of the fact that for the assessment year 1979-80, the firm had been granted registration and the provisions of Section 77(1) of the Income Tax Act, 1961 (for short 'the Act'), could not help the assessee in carrying forward the loss, as it ceased to be un-registered firm in the year to which the loss was sought to be carried forward. The assessee relies on Addl. C.I.T. vs. B. S. Dall Mills, a decision of the Karnataka High Court, but benefit of that case was not given to the assessee although it was on all fours applicable for the reasons stated in the order of the I.T.O.

(2) On appeal, the Appellate Assistant Commissioner applied *B. S. Dall Mills' case* (supra) and gave relief to the assessee, that it will be entitled to carry forward the loss suffered in the assessment year 1978-79 to set off against the income of the firm in the subsequent years and the registration did not make any difference as the firm continued to be the same. The order of the Appellate Assistant Commissioner was upheld by the Income Tax Appellate

Tribunal, Amritsar, and at the instance of the Revenue, the following question has been referred for opinion of this Court :—

“Whether on the facts and in the circumstances of the case, the ITAT is right in law in upholding the finding of AAC that the assessee is entitled to set off the loss against the income of the firm in subsequent years in view of provisions of Section 77(1) of the I.T. Act, 1961 ?”.

The decision in *B. S. Dall Mills's case* (supra) is on all fours in favour of the assessee, and, therefore, the question arises is whether it lays down correct law. After considering the provisions of Section 77(1) of the Act and other relevant provisions, we are of the opinion that the Karnataka High Court has come to the correct conclusion on the interpretation of Section 77(1) of the Act, that if an un-registered firm becomes registered firm in the subsequent years, the loss incurred by the un-registered firm can be carried forward in the subsequent years in spite of the registration. One of the pre-requisites for doing this is that the firm should be the same. If there is a change in the constitution of the firm, then different consequences may flow. Here, there is no change in the constitution of the firm, and, therefore, the word “firm” used in the end of Section 77(1) of the Act would include both, registered as well as un-registered firm. The registration of the firm does not take away the benefit, which would have accrued to it under section 77(1) of the Act, if it had remained un-registered. Accordingly, we agree with the view taken by the Karnataka High Court and hold that carry forward was rightly allowed and the referred question is decided in favour of the assessee, that is, in the affirmative, with no order as to costs.

P. C. G.

FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJ.

KARTAR SINGH and others.—*Petitioners.*

versus

STATE OF PUNJAB and others.—*Respondents.*

Civil Writ Petition No. 2157 of 1986.

May 29, 1989.

Punjab Revenue Patwaris Class III Services Rules, 1966—Rls 10(IV) and 15—Punjab Land Revenue Act, 1887—S. 28(1)—Fixation of seniority—Retrenched officials of Consolidation Department