

Before R. N. Mittal and J. V. Gupta, JJ.

COMMISSIONER OF INCOME TAX AMRITSAR,—*Petitioner,*  
*versus*  
 MATHOORAM PREM CHAND,—*Respondent.*

*Income Tax Reference No. 84 of 1974.*

May 22, 1979.

*Income Tax Act (XLIII of 1961)—Sections 139, 144, 184 and 185—Income Tax Rules 1962—Rules 22, 23 and 24—Partnership firm—When entitled to registration—Non-distribution of profits amongst the partners—Delay in filing the return—Whether grounds for refusing registration.*

*Held*, that in order to determine whether a firm is entitled to registration or not, the main thing is to find out if the firm is a genuine one and has complied with the provisions of sections 184 and 185 of the Income Tax Act, 1961 and the Income Tax Rules 1962 for making the application. Income-tax authorities cannot refuse to register the firm if the applications are made in accordance with the provisions of sections 184 and 185 and the rules on the ground that the profit of the partnership had not been divided by the partners. However, the authorities can refuse to register the firm if there is any failure on the part of the firm as mentioned in section 144. The division of profits does not fall within the purview of the said section. The main fact that is to be taken into consideration for registration is that the partnership is a genuine one and evidenced by an instrument. (Paras 12 and 13).

*Held*, that section 139 of the Act has no connection with sections 184 and 185. There is no reference of the earlier section in the latter sections. It is true that the firms are required to file returns within a period prescribed by section 139. However, if a firm fails to do so, the Income Tax Officer is authorised to take action against the firm under section 271 of the Act. He has no right to refuse registration on this ground. (Para 16).

*Application under Section 256(1) of the Income-tax Act, 1961, wherein the Income-tax Appellate Tribunal, Amritsar, referred the following question of law for opinion of High Court of Punjab and Haryana at Chandigarh:—*

*“Whether on the facts and in the circumstances of the case the Tribunal was right in law in granting registration to the assessee for the assessment year 1967-68 ?”*

D. N. Awasthy, Advocate with B. K. Bhingan, Advocate, for the appellant.

B. S. Gupta, Advocate with C. R. Dahiya, Advocate and A. N. Mittal, Advocate with Viney Mittal, Advocate, for the Respondent.

## JUDGMENT

*R. N. Mittal, J.*

(1) The Income-tax Appellate Tribunal, Amritsar, has referred the following question of law for opinion of this Court under section 256(1) of the Income-tax Act, 1961 (hereinafter to be referred to as the Act):—

“Whether on the facts and in the circumstances of the case the Tribunal was right in law in granting registration to the assessee for the assessment year 1967-68”.

(2) Briefly, the relevant facts giving rise to this reference are:—

Mothoo Ram and Harnam Dass were partners of the firm known as M/s. Mothoo Ram Prem Chand. Its head office was at Phagwara and branches at Guraya and Banga. It was granted registration upto the assessment year 1966-67. Harnam Dass retired from the partnership on May, 1966 and died on June 9, 1966. Thereafter a new partnership came into existence with effect from June 1, 1966, under a partnership deed, dated June 29, 1966. In the new partnership there were four partners, namely, Mothoo Ram, Prem Chand, son of Mothoo Ram, Ramesh Kumar and Naresh Kumar, sons of Prem Chand, who had equal share in profits and losses. It continued to carry the same business in the name and style of M/s. Mothoo Ram Prem Chand (hereinafter to be referred to as the assessee-firm).

(3) On March 27, 1967, the assessee-firm filed an application in Form 11-A for registration for the assessment year 1967-68, relevant to the accounting period from April 1, 1966 to March 31, 1967. The Income-tax Officer impounded the books of the assessee-firm for the period ending March 31, 1967, on August 28, 1969. The books had not been closed. The assessee, it is stated, made a number of applications to the Income-tax Officer for returning the books and the inspection of records in order to enable it to file the return of the income. Ultimately, the assessee-firm filed the return of its income on August 26, 1971, after inspecting the record. It declared its income as Rs. 27,580. It along with the return filed statements of trading and profit and loss account prepared on the estimated basis, and a statement showing the division of profits amongst the partners.

(4) The Income-tax Officer decided the case of the assessee-firm on March 4, 1972. While deciding the case, he observed that according

Commissioner of Income Tax Amritsar v. Mothooram Prem Chand  
(*vs. N. Mittal, J.*)

to clause (7) of the partnership deed, dated June 29, 1966, the profits and losses of the business were to be determined on March 31, or on any other date mutually agreed upon and these were to be credited and debited, as the case may be, to the ledger account of the parties in equal proportion as stipulated in clause (5). He then observed that even though the books of the assessee-firm were required to be closed on March 31, 1967, for the year 1967-68, the trading and profit and loss accounts were not prepared on that date and as such the profits for the said year were not distributed between the partners till March 31, 1967. He also held that since the profits of the business were not divided either on March 31, 1967 or even thereafter upto August 28, 1969, the assessee-firm had not satisfied the condition laid down in clause (3) of Form No. 11-A. He then stated that the registration was a matter of privilege and not of right and that the assessee had also not complied with the provisions of Sections 184 and 185 of the Act and Rules 22, 23 and 24 of the Income-tax Rules, 1962 (hereinafter to be referred to as the Rules). In view of the above observations, he dismissed the application for registration and completed the assessment of the assessee-firm in the status of an unregistered firm.

(5) The assessee-firm went up in appeal before the Appellate Assistant Commissioner, who agreed with the observations of the Income-tax Officer and, therefore, confirmed his order. The assessee-firm went up in 2nd appeal before the Income-tax Tribunal, Amritsar. The Tribunal reversed the orders of the Income-tax Officer and the Appellate Assistant Commissioner, observing that the firm was a genuine firm and the ground on which the registration to the assessee-firm had been refused, was not tenable. It consequently directed that the firm be registered for the assessment year 1967-68. At the request of the Commissioner of Income-tax, the above-mentioned question has been referred for the opinion of this Court.

(6) It is contended by Mr. Awasthy, learned counsel for the Revenue, that registration of a firm is a privilege and is, therefore, allowed if the provisions of sections 184 and 185 of the Act and rules 22, 23 and 24 of the Income-tax Rules, 1962 (hereinafter referred to as the Rules) read with other provisions of the Act were complied with. It is further contended by him that the assessee-firm did not prepare the profit and loss account in terms of clause 7 of the partnership deed and divide the profits at the end of the accounting year and it filed the return relating to the relevant assessment year late i.e.

on August 26, 1971. He also contends that the profit was not divided by the partners which was pre-requisite for the grant of registration. In the circumstances, he submits that the registration could not be granted to the assessee-firm.

(7) We have given a thoughtful consideration to the argument of the learned counsel. In order to decide the question it will be necessary to notice the relevant sections and rules. Chapter XVI deals with provisions applicable to firms. Section 184, which is a part of the Chapter, relates to applications for registration, and section 185 to the procedure on receipt of applications. The relevant portions of the said sections are as follows:—

“184. *Application for registration:—*

(1) An application for registration of a firm for the purposes of this Act may be made to the Income-tax Officer on behalf of any firm if—

(i) the partnership is evidenced by an instrument; and

(ii) the individual shares of the partners are specified in that instrument.

(2) ... ..  
... ..

(3) The application shall be made to the Income-tax Officer having jurisdiction to assess the firm, and shall be signed

... ..  
... ..

(4) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought:

... ..  
... ..

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof:

... ..  
... ..

Commissioner of Income Tax Amritsar *v.* Mothooram Prem Chand  
(R. N. Mittal, J.)

---

(6) The application shall be made in the prescribed form and shall contain the prescribed particulars.

(7) ... ..  
... ..

(8) Where any such charge has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section.

185. *Procedure on receipt of application:—*

(1) On receipt of an application for the registration of a firm, the Income-tax Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and—

(a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year;

(b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

(2) ... ..  
... ..

(3) ... ..  
... ..

(4) ... ..  
... ..

(5) Notwithstanding anything contained in this section, where, in respect of any assessment year, there is, on the part of a firm, any such failure as is mentioned in section 144, the Income-tax Officer may refuse to register the firm for the assessment year.

... ..  
... ..”

Part V of the Rules deals with registration of firms. It contains four rules, namely, 22 to 25. Some of the provisions in the rules and section 184 are overlapping. The relevant rules are reproduced hereunder:—

*“22. Application for registration of a firm:—*

(1) An application for registration of a firm for the purposes of the Act shall be made in accordance with provisions of sub-rules (2) to (5).

(2) Where the application is made before the end of the relevant previous year—

(i) and where no change in the constitution of the firm or the shares of the partners has taken place during the previous year before the date of the application—

(a) the application shall be made in Form No. 11; and

(b) it shall be accompanied by the original instrument evidencing the partnership at the date of the application together with a copy thereof. A certified copy of the instrument together with a duplicate copy thereof may be attached to the application if, for sufficient reason, the original instrument cannot be produced;

(ii) and where any change or changes in the constitution of the firm or the shares of the partners have taken place during the previous year before the date of the application—

(a) the application shall be made in Form No. 11A; and

(b) it shall be accompanied by the original instrument or instruments evidencing the partnership as in existence from time to time during the previous year up to the date of the application together with copies thereof. A certified copy of the instrument or instruments together with a duplicate copy

Commissioner of Income Tax Amritsar *v.* Mothooram Prem Chand  
(R. N. Mittal, J.)

---

thereof may be attached to the application if, for sufficient reason, the original instruments or instruments cannot be produced.

...                      ...                      ...                      ...  
...                      ...                      ...                      ...

From a plain reading of the rules it is evident that the following conditions are essential for the registration of the firm:—

- (1) The partnership should be evidenced by an instrument.
- (2) The individual shares of the partners should be specified in the instrument.
- (3) The partnership should be a genuine partnership.
- (4) The application should be made before the end of the previous year for the assessment year in which the registration is sought.
- (5) The application should be made to the Income-tax Officer who has jurisdiction to assess the firm.
- (6) The application should be accompanied by registered partnership deed together with a copy thereof.
- (7) The application should be signed by the partners personally.
- (8) The application should be made in the prescribed form.
- (9) If any change has taken place in the previous year, the firm should apply for fresh registration for the assessment year concerned.

(8) Section 185(5) provides that where on the part of a firm there is any such failure, as mentioned in section 144, the Income-tax Officer may refuse to register the firm for the assessment year.

(9) There are forms prescribed by the rules in which applications are to be made for registration of the firms. Where no change in the

---

constitution of the firm or the 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, but where any change or changes in the constitution of the firm or the shares of the partners have taken place during the previous year, the application is filed in Form 11-A. Para 3 in Form 11 as well as in Form 11-A is in the following terms:—

“We do hereby certify that the profits (or loss, if any) of the pervious year were/will be period up to the date of dissolution were/will be divided or credited as shown in the Schedule and that the information given above and in the Schedule is correct.”

It is further clear from the said clause that the partners have to certify that the profits of the previous year were or will be divided. The form does not prescribe that the profits of the previous year must have been divided. It is also evident from the provisions of section 184(4) of the Act that it is not necessary to divide the profits before making the application. The Section has been reproduced above. It says that the application shall be made before the end of the previous year for the assessment year in respect of which registration is sought. If the application is made before the end of the previous year it is not possible that the profits might be worked out and divided as the balance sheets are prepared at the end of the previous year.

(10) This matter has been considered by the Supreme Court in *Commissioner of Income-tax, Madras v. Sivakasi Match Exporting Co.*, (1). After noticing Section 26A of the Indian Income-tax Act, 1922, and the rules framed thereunder, K. Subba Rao, J. (as he then was), speaking for the Court, observed that the jurisdiction of the Income-tax Officer was confined to the ascertaining of two facts, namely:—

- (i) Whether the application for registration is in conformity with the rules made under the Act.
  - (ii) Whether the firm shown in the document presented for registration was a bogus one or had no legal existence.”
-



Commissioner of Income Tax Amritsar v. Mothooram Prem Chand  
(v. N. Mittal, J.)

The relevant observations of the learned Judge are as follows:—

“That the combined effect of section 26A and the rules made thereunder was that the income-tax Officer could not reject an application made by a firm if it gave the necessary particulars prescribed by the rules, and if there was a firm in existence as shown in the instrument of partnership. A firm might be said to be not in existence if it was a bogus or not a genuine one, or if in law the constitution of the partnership was void. The jurisdiction of the Income-tax Officer was, therefore, confined to ascertaining two facts, namely, (i) whether the application for registration was in conformity with the rules made under the Act, and (ii) whether the firm shown in the document presented for registration was a bogus one or had no legal existence. Further, the discretion conferred on him under section 26A was a judicial one and he could not refuse to register a firm on mere speculation, but had to base his conclusion on relevant evidence.”

(11) A Division Bench of the Kerala High Court in *V. K. Kurien and K. P. George v. Commissioner of Income-tax, Kerala*, (2) in view of the observations in *Sivakasi Match Exporting Co.'s case* (supra), took a similar view. The learned Chief Justice, who prepared the judgment of the Bench, observed:—

“Non-maintenance of accounts and non-payment of interest to a partner, notwithstanding a provision in the partnership deed that interest at 9 per cent, shall be paid to a partner in respect of advances of money to the firm over and above his contribution to the capital, is not a sufficient ground for refusing registration of a firm. ....”

The Andhra Pradesh High Court took the same view in *Variety Hall and Ramakrishna Textiles v. Commissioner of Income-tax, A.P.*, (3), and held:—

“The failure to disclose certain income and to divide the same among the partners in accordance with the terms of the partnership deed does not by itself disentitle a firm to be

(2) 1967(63) I.T.R. 675.

(3) 1972(84) I.T.R. 202.

---

registered as long as the partnership is evidenced by an instrument of partnership and there is no reason to doubt the genuineness of the partnership."

The Patna High Court also examined the matter in *C.I.O. Full Mould Tyre Retreaders (India) v. Commissioner of Income-tax, Bihar and Orissa*, (4). A Division Bench while interpreting Section 26A read with the relevant rules, observed as follows:—

"For initial registration of a firm under section 26-A of the Indian Income-tax Act, 1922, read with rr. 2 and 3, the certificate required to be appended to the application for registration is that the profit or loss, if any, of the previous year were either divided or credited or will be divided or credited, the option being with the assessee to divide or credit the profit or loss after the close of the previous year or even later, whereas, in the case of renewal of registration of a firm, the dividing or crediting must be done by the time such application is made. The question being one as to the intention whether or not the profit or loss was meant to be divided between the partners, a belated division might give rise to an adverse factual presumption against the claim for registration but it cannot be an infringement of the requirements of law. Therefore, where there was actual division and credit of the share of profit of each partner in their current account, though made later than the date of filing of application under section 26-A, it cannot be said that the profits were not divided between the partners and there was, therefore, no ground to reject the claim for initial registration".

(12) It may be mentioned that section 26-A of the 1922 Act is replaced by sections 184 to 186 of Act. From the above discussion it emerges that Income-tax Authorities cannot refuse to register the firm if the applications are made in accordance with the provisions of sections 184 and 185 and the rules mentioned above on the ground that the profits of the partnership had not been divided by the partners. However, the authorities can refuse to register the firm if there is any failure on the part of the firm as mentioned in section 144. The division of the profits does not fall within the purview of the said section. The main fact that is to be taken into consideration for

Commissioner of Income Tax Amritsar v. Mothooram Prem Chand  
(R. N. Mittal, J.)

registration is that the partnership is a genuine one and evidenced by an instrument.

(13) It is worth mentioning that the Tribunal gave finding that the firm was genuine, that an injunction had been granted by the Civil Court restraining the partners from making any entry in the account books, that the profits were divided and credited to the account of the partners before the return was filed on August 26, 1971 and that the assessment was completed on March 4, 1972. These findings being of fact could not be questioned in this Court unless a reference was sought for and obtained (See *Aluminium Corporation of India Ltd. v. Commissioner of Income-tax, West Bengal*, (5). In order to determine whether the firm is entitled to registration or not, the main thing is to find out if the firm is a genuine one and has complied with the provisions of sections 184, 185 and the rules for making the application. In our view the assessee-firm had complied with the requirements of the law in this case.

(14) The learned counsel for the Revenue placed main reliance on the observations of the Supreme Court in *R. C. Mitter and Sons v. Commissioner of Income-tax, Calcutta*, (6), wherein it said that the essential conditions that should be fulfilled before a firm is entitled for registration are:—

- (i) the firm should be constituted under an instrument of partnership, specifying the individual shares of the partners ;
- (ii) an application on behalf of, and signed by, all the partners and containing all the particulars as set out in the rules must be made ;
- (iii) the application should be made before the assessment of the firm under section 23, for that particular year ;
- (iv) the profits or losses, if any, of the business relating to the accounting year should have been divided or credited as the case may, in accordance with the terms of the instrument ; and

---

(5) (1972) 86 I.T.R. 11.

(6) (1959) I.T.R. 194.

- (v) the partnership must be genuine and must actually have existed in conformity with the terms and conditions of the instrument of partnership, in the accounting year.

The emphasis has been laid by the learned counsel on the condition mentioned at serial No. (iv). It appears that the rules which were taken into consideration by their Lordships were unamended rules of 1922, as existed before the amendments of 1952. The application for registration before the amendments contained the following clause :—

“We do hereby certify that the profits (or loss if any) of the previous years were

Period up to the date of dissolution were/will be divided or credited as shown in Section B of the Schedule and that the information given above and in the attached Schedule is correct.”

Now the language used in the application form, as already stated above, is different. It may be highlighted that the clause provides that it is sufficient if the partners say that the profits will be divided or credited. Therefore, Mr. Awasthy cannot derive any benefit from the observations of the Lordships of the Supreme Court. He also placed reliance on *Ganesh Lal Laxmi Narain v. Commissioner of Income-tax, U.P.* (7). In this case the learned Judges followed the ratio in *R. C. Mitter's case* (supra). For similar reasons the ratio in the case will not apply to the present case. Mr Awasthy also made a reference to *Sher-e-Punjab Silk Stores v. Commissioner of Income-tax, New Delhi* (8), wherein their Lordships of the Supreme Court said that from a reading of section 26A of the 1922 Act, and the rules 2, 3 and 6 of the Income-tax Rules, it is clear that in the case of an application for renewal of registration of a firm it is incumbent on the part of the assessee-firm to have divided the previous year's profits before it makes its application for renewal. The case does not deal with the registration of the firm but with its renewal. In the

---

(7) (1968) 68 I.T.R. 696.

(8) (1973) 88 I.T.R. 421.

Court on its own motion *v.* Kasturi Lal and others  
(S. S. Sandhawalia, C.J.)

---

circumstances the ratio in the case will not be applicable to the facts of the present case.

(15) Mr Awasthy has also argued that it is incumbent on the assessee-firm to file returns within time prescribed by section 139 of the Act. He further submits that the scheme of the Act shows that in case the firm fails to do so, it is not entitled to registration. In the present case, he urges, the return was filed by the respondent late and, therefore, was also not entitled to registration.

(16) We regret, we are unable to accept this contention of the learned counsel as well. Section 139 has no connection with sections 184 and 185. There is no reference of the earlier section in the latter sections. It is true that the firms are required to file returns within a period prescribed by section 139. However, if a firm fails to do so, the Income-tax Officer is authorised to take action against the firm under section 271 of the Act. He has no right to refuse registration on this ground. We, consequently, reject this contention of Mr. Awasthy.

(17) For the reasons recorded above, we answer the question in the affirmative, i.e., in favour of the assessee.

No order as to costs.

J. V. Gupta, J.—I agree.

---

N.K.S.

FULL BENCH

*Before S. S. Sandhawalia, C.J., S. C. Mital, Bhopinder Singh Dhillon,  
A. S. Bains and Harbans Lal, JJ.*

COURT ON ITS OWN MOTION—*Petitioner.*

*versus*

KASTURI LAL AND OTHERS—*Respondents.*

*Criminal Original No. 19/CRL. of 1978.*

May 25, 1979.

*Contempt of Courts Act (LXX of 1971)—Sections 14, 15, 17, 18 and 22—Contempt of Court (Punjab and Haryana) Rules 1974—Rule 6(1)—Constitution of India 1950—Articles 215 and 225—Contempt jurisdiction—Nature and scope of—Single Judge of a High*