From the above observations it would be clear that in Messrs Mount Corporation's case the orders of the sponsoring authority were not considered bad because it had framed its own rules to regulate its own business but because the decision taken by the sponsoring authority was not the decision of that authority but of another committee which the State Government had constituted and which the State Government had no authority to constitute and because the sponsoring authority was turned into a channel through which those decisions were conveyed to the licensing authority. The above observations, therefore, do not support Mr. Chawla's contention that the Governor while granting sanction under section 7 of the Explosive Substances Act read with notification No. 33/2/57-Police (IV), Government of India, Ministry of Home Affairs, No. 48303, dated 4th May, 1957, issued under Article 258(1) of the Constitution could not make rules to regulate the business of granting sanction even though the State Government was performing the function of the Central Government while giving sanction.

(15) The result of the above discussion is that sanction Exhibit P. 7 had been validly granted. The appellant having been found to be in possession of the handgrenade and the cartridges, I find no merit in this appeal and dismiss the same.

B.S.G.

CIVIL MISCELLANEOUS

Before D. K. Mahajan, and B. R. Tuli, JJ.

M/S NAUHAR CHAND CHANAN RAM,—*Petitioner.*

versus.

THE COMMISSIONER OF INCOME TAX,—*Respondent.*

Income Tax Reference No. 21 of 1965.

October 6, 1970.

The Income Tax Act (XI of 1922)—Sections 10, 12 and 26-A—Partnership constituted by the owners of property for leasing out and earning rental income therefrom—Such partnership—Whether entitled to registration under section 26-A.

Held, that under section 26-A of Income-tax Act, all that has to be seen is whether there is a validly constituted partnership. If there is a legal partnership it is entitled to registration under the section. Sections 10 and 12 of this Act have nothing to do with the validity of partnership either under the Partnership Act or its registration under section 26-A of the Income-tax Act. There is no legal impediment for the owners of a joint property to enter into a partnership for purposes of leasing out their property and earning income therefrom. There is no provision under the Partnership Act which renders such a partnership illegal and hence it is entitled to be registered under section 26-A of the Income-tax Act.

(Para 6).

Reference made u/s 61(1) *of the Income Tax Act*, 1922 *by the Income Tax Appellate Tribunal (Delhi Bench 'A') on* 12*th April*, 1965 *for opinion on the following question of law arising out of I.T.A. No.* 5852 *of* 1962-63 *regarding Assessment year* 1960-61.

"Whether the Tribunal misdirected themselves in law in coming to the finding that no business was carried on and therefore there was no partnership in law entitled to registration under Section 26-A of the Income-tax Act ?"

RAJINDER NATH MITTAL AND D. K. GUPTA, ADVOCATES, for the petitioner.

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the respondent.

JUDGMENT

MAHAJAN, J.—(1) The Income Tax Appellate Tribunal, Delhi Bench 'A' has referred the following question of law for our opinion :

"Whether the Tribunal misdirected themselves in law in coming to the finding that no business was carried on and, therefore, there was no partnership in law entitled to registration under section 26A of the Income-Tax Act?"

(2) The assessees entered into a deed of partnership on the 20th day of April, 1957. In all they were 10 partners. These ten partners emanated from two families known as Nauhar Chand Chanan Ram and Bishan Mal Relu Ram. The dispute relates to the assessment year 1960-61 and arose on the application of the assessees for the renewal of the registration of the firm under section 26-A of the Income-Tax Act, hereinafter referred to as the Act. In the deed of partnership in clause (3) it is clearly stated:—

"that the business of the firm is and shall be that of running the cotton ginning and pressing factory at Mansa, either by

himself or by giving on lease and other allied trades and on such other lines as the partners may desire to take up from time to time."

(3) The deed also contained usual partnership clauses and it is not necessary to refer to them. The shares of the partners were specified in the deed. The Income-tax Officer, B-Ward, Bhatinda rejected the application on the ground that there was no partnership under the agreement, dated the 20th April, 1957 and none ever came into existance. The assessees preferred an appeal to the Appellate Assistant Commissioner against the decision of the Income-tax Officer. The Appellate Assistant Commissioner reversed the decision of the Income-tax Officer and held that—

"it cannot be said that the factory in question is not a commercial asset. Further the fact that it has been let out to others and not used by the appellant itself does not mean that no business activity for the purposes of profit is being carried on by the appellant. Furthermore there is no bar in the partnership Act to the constitution of the firm in such cases ——— ——— ——— ——— All the other requirements of law for the purposes of registration of the firm under section 26-A have been duly complied with. There is no bar legal or otherwise to the grant of registration."

(4) The Income-tax Officer, then preferred an appeal to the Income-tax Appellate Tribunal and the Tribunal reversed the decision of the Appellate Assistant Commissioner. The reasons which prevailed with the Tribunal must be stated in their own words—

"2(a) We briefly summarise the facts :

Messrs Noharchand-Chananram Mansa (hereinafter called the asseesee) was constituted under a deed of partnership, dated 20th April, 1957.

There were 10 partners as shown below:—

(i) Shri Ramjidas, son of L. Noharchand ... 1/4th share.

(ii) Shri Purshotamdas, son of L. Noharchand... 1/4th share.

(iii) Shri Chananram, son of L. Bishnamal ... 1/12th share.

(iv) Shri Benarsidas, son of L. Bishnamal ... 1/12th share.

(v) Shri Baburam, son of L. Bishnamal ... 1/12th share.
(vi) Shri Rajaram, son of L. Reluram ... 1/20th share.
(vii) Shri Ramkarandas, son of L. Reluram ... 1/20th share.
(viii) Shri Dwarkadas, son of L. Reluram ... 1/20th share.
(ix) Shri Brij Lal, son of L. Reluram ... 1/20th share.
(x) Shri Roshanlal, son of L. Reluram ... 1/20th share.

(b) All the above ten gentlemen belonged to two families. The first family was known as "Noharchand Chananram" and the Second family as "Bishanamal Reluram". The members of both the families have now partitioned among themselves.

(c) These families owned a ginning and pressing factory which was established in 1935. This factory was known as "Noharchand-Chanan Ram Factory". During the course of time, there were several partitions in the families and on each partition the assessee firm was reconstituted.

(d) From and after the year 1951 (Assessment year: 1952-53), the factory was leased out to others. In the previous year (i.e., the year 1959-60), the factory was leased out to another partnership (hereinafter called the lessee-partnership) of 13 persons as shown below :—

(i) Shri Chananram, son of L. Bishnamal ... 9 nP. share.
(ii) Baburam, son of L. Bishnamal .. 9 nP. share.
(iii) Shri Benarsidas, son of L. Bishnamal ... 9 nP. share.
(iv) Shri Rajaram, son of Reluram ... 15 nP. share.
(v) Shri Parshotamdas, son of L. Noharchand .. 7 nP. share.
(vi) Shri Ramjidas, son of L. Noharchand ... 6 nP. share.
(vii) Shri Faqir Chand, son of L. Munnalal ... 9 nP. share.
(viii) Shri Shadiram, son of L. Gondamal ... 6 nP. share.
(ix) Shri Noharchand Jindal, son of Daulatram ... 6 nP. share.
(x) Shri Ramparshad, son of L. Chetumal ... 6 nP. share.
(xi) Shri Parbhdyal, son of L. Ramdittamal ... 6 nP. share.
(xii) Shri Madanlal, son of L. Nandram ... 6 nP. share.
(xiii) Shri Suchamal, son of L. Bholamal ... 6 nP. share.

The first six partners were common in these two concerns.

(e) It may be noticed that of the five sons of L. Reluram, only one, viz., Shri Rajaram, joined the new partnership and the other four did not.

(f) On a question from us the learned counsel for the assessee stated that the assessee did not carry on the business for two reasons :—

(i) the partners did not have enough finances and did not want to risk any further; and

(ii) there were disputes among five sons of L. Reluram and they did not wish to join the new partnership.

(g) In the new partnership, Shri Shadiram, son of L. Gonda Mal, came in as a financing partner and the last six were outsiders who joined as working partners.

(h) We have also studied the deed of partnership and it lays down that the partners could either carry on business themselves or they could lease out the factory.

3(a) On the above facts we think that it cannot be said that the assessee carried on any business. It is no doubt true that "Noharchand Chananram Factory" was at one time a commercial asset, but it ceased to be so when it was let out because it was leased out as a whole and thereafter the owners never worked the factory themselves. Four of the partners did not even join the new lease partnership and, evidently, they did not want to carry on the business. In our opinion, the asset no longer maintains its character of a commercial asset and it is merely a capital investment from which the owners derive rental income.

(b) Another finding of fact is necessary viz; was the lease only a temporary phase of business ? We find that it was not a temporary phase inasmuch as the partnership never carried on the ginning business. Similarly, we also record the finding that it was not a case when main business was carried on, but a subsidiary portion was let out. The factory was leased out as a whole as an entity.

(c) The economic distinction between "business activities" and "the activity of a rentier" needs no elaboration. The

assessee firm since its inception has acted like a 'rentier' and it has never carried on any business. We would, therefore, record this finding that "leasing of the factory" was not in the circumstances of the case, an activity in the nature of business.

(d) If this conclusion is arrived at, then it cannot, but be held that the partnership is not entitled to registration because the fundamental requirement of a valid partnership viz., "carrying on of business" is not fulfilled."

(5) The assessees were dis-satisfied with this order and moved the Tribunal under section 66(1) of the Act. The Tribunal by its order, dated the 12th April, 1965, thus, referred the question of law for our opinion.

(6) The contention of the learned counsel for the assessees is that there is no legal impediment for the owners of the joint property to enter into partnership for purpose of leasing out the partnership property and earning income therefrom. The only argument addressed by the learned counsel for the Department was that earning of rental income is not income from business. That may or may not be so. But that is a matter wholly irrelevant for the purpose of determining whether partnership should or should not be registered under section 26-A of the Act. All that has to be seen is whether there is a validly constituted partnership and for that purpose one has to refer to the provisions of the Partnership Act. The learned counsel for the Department was unable to point out any provision in the Partnership Act which would render such a partnership illegal. It was not disputed that if there was a legal partnership it was entitled to registration under section 26-A of the Act. Therefore, the controversy merely rested on the short matter as to whether the partnership in question is a legal partnership or not. The learned counsel drew our attention to the decision of the Supreme Court in *New Savan Sugar and Gur Refining Co., Ltd.*, v. *Commissioner of Income-tax, Calcutta* (1), for his contention that the income of such a partnership being merely rental income, would only be assessable under section 12 and not under section 10 of the Act. That is a matter which has nothing to do with registration of the partnership under section 26-A of the Act. It may be that the income of this partnership may have to be

(1) (1969) 74 I.T.R. 7.

assessed under section 12, but that is a matter on which we are not called upon to pronounce. All that we have to determine is whether section 12 or section 10 of the Act stands in the way of partnership being registered under section 26-A of the Act. In our opinion these provisions have nothing to do with the validity of partnership either under the Partnership Act or its registration under section 26-A of the Income Tax Act. The learned counsel, then relied upon *Tripurasundari Cotton Press co. Ltd,* v. *Commissioner of Income Tax Andhra Pradesh* (2). This case has no bearing so far as the present controversy is concerned. In fact, this is a case which is more in line with the earlier decision of the Supreme Court already referred to. The next decision which was relied upon by the learned counsel for the Department is *Narain-Swadeshi Weaving Mills* v. *Commissioner of Excess Profits Tax* (3). This was a decision under section 2(5) of the Excess Profits Tax Act. This decision rests solely on the peculiar definition of "Business" in the Act. The question which we are called upon to determine was not a subject of controversy in this case. It has thus no bearing on the matter before us. The decision which is nearer in point is the one reported as *Dal Chand and Sons* v. The *Commissioner of Income-tax, Patiala* (4). The judgment in this case was rendered by Chief Justice Mehar Singh and it was observed by the learned Chief Justice as follows:—

> "that a business may be done in a number of ways and one of the ways is to run a commercial asset as such and another way may be that the commercial asset, at a particular time, is found to be more responsive to profit if allowed to be run as such by another as lessee. In either case the owner of the factory carries on the business of earning profits and gains from such an asset. So long as a business asset is exploited as such and profits or gains are earned from it, the same are profits and gains of a business, howsoever the owner of the commercial asset exploits the same. So when it is said whether he carried on the business himself or not that only means whether he carried on a business activity which may have led to his earning profits or making gains. Once profits or gains are made from the use of the commercial asset itself, then the further detail whether the owner ran the commercial asset himself or it

(2) (1966) 62 I.T.R. 193.
(3) (1954) 26 I.T.R. 765.
(4) I.L.R. (1968) II Pb. & Hr. 379.

had been run by another person as a lessee for him makes not the least difference. He makes profits or gains just the same and he makes the same from and in consequence of running of the business asset. Hence income derived by an assessee from the lease of a factory becomes income from business and assessable under section 10 Income-tax Act."

This decision clearly indicates that there can be a partnership to carry on business of leasing property or commercial assets. As regards rental income, the question whether such income is assessable under section 10 or section 12 of the Act is a matter which, as already pointed out, we are not called upon to pronounce and in any case that is a matter which has to be determined on the facts and in the circumstances of each individual case.

(7) For the reasons recorded above we return the answer to the question referred for our opinion in the affirmative. The assessees will have their costs which are assessed at Rs. 200.

B. R. TULI, J:—I agree:

N. K. S.

CIVIL MISCELLANEOUS.

Before Harbans Singh, C.J. and Prem Chand Jain, J.

M/S WOOD WORKER AND PACKING CASE WORKS,—*Petitioner.*

versus

THE STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ No. 2722 of 1968.

October 7, 1970.

Punjab General Sales Tax Act (XLVI of 1948)—Sections 20(6) and 22—Punjab General Sales Tax Rules (1949)—Rule 59(2)—Power to dismiss an appeal in default—Whether ultra vires *section 20(6)—Appellate authority—Whether obliged to decide every appeal on merits irrespective of the non-appearance of the appellant or his counsel.*

Held, that the vires of rule 59(2) of Punjab General Sales Tax Rules, 1949 depends upon the true scope of sub-section (6) of Section 20 of Punjab