

Commissioner of Income Tax, Haryana v. M/s Jain Steel Rolling Mills, Hissar (G. C. Mital, J.)

(7) In view of the aforesaid discussion, the writ petition fails and is dismissed with no order as to costs.

R.N.R.

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

COMMISSIONER OF INCOME TAX, HARYANA,—Petitioner.

*versus*

M/S. JAIN STEEL ROLLING MILLS, HISSAR.—Respondent.

Income Tax Case No. 38 of 1980

November 15, 1988.

*Income Tax Act (XLIII of 1961)—S. 256(2)—Minors admitted to the benefits of partnership—Deed not signed by guardian of minors—Application for registration rejected—No opportunity granted to guardian as per the directions of Circular issued by Central Board—Such circular—Whether binding on department—Whether the Income Tax Officer could refuse registration.*

*Held*, that such like circulars are binding on the department and once that is so, circular should have been taken notice of and an opportunity should have been granted to the guardians to sign the partnership deed on behalf of the minors. Since this procedure was not followed, the Income Tax Officer could not refuse registration.

(Para 4).

Ashok Bhan, Sr. Advocate with Ajay Mittal, for the petitioner.

None, for the respondents.

#### ORDER

Gokal Chand Mital, J.

(1) The revenue desires this Court to issue mandamus for calling for the statement of the case on the following question:

“Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the registration benefits can not be denied because of lack of

signature of the guardians, unless, such guardians refused to verify or sign the documents ?”

The facts of the case are as follows :

(2) Certain minors were admitted to the benefits of partnership but partnership deed was not signed by guardian of the minors. The application for registration of the partnership was rejected on this ground. However, on appeal to the Tribunal the registration was ordered on the reasoning that by circular CBDT No. 210/13/74/ITA (II) dated 19th March, 1976, the Central Board had issued directions that the assessee need not be denied registration for lack of signatures of the guardian unless such a guardian refused to verify or sign the document if required to do so. Since opportunity had not been granted to the guardian order for registration was made.

(3) Before us the argument has been raised on behalf of the Revenue for issuing *mandamus* on the basis of a Full Bench decision of Allahabad High Court in *Additional Commissioner of Income Tax v. Uttam Kumar Parmod Kumar* (1), whereas counsel for the assessee has strongly relied upon the circular, which is binding on the Revenue in view of the Supreme Court decisions in *K. P. Varghese v. Income Tax Officer Ernakullam* (2), *Ellerman Lines Ltd. v. Commissioner Income Tax, West Bengal-I* (3) and *the Commissioner of Agricultural Income Tax Kerala v. Perunad Plantations Ltd.* (4), in which it has been held that such circulars are binding on the department. It is also argued that the dictum of the Allahabad High Court in *Uttam Kumar's case* (supra) was dissented from by the Andhra Pradesh and Calcutta High Courts in *Srinivasa Stainless Steel and Moulding Works v. Commissioner of Income Tax* (5) and *Commissioner of Income Tax v. Associate Industrial Distributors* (6).

(4) We have gone through the three Supreme Court decisions, referred to above, and find that it is clearly laid down that such like circulars are binding on the department and once that is so, circular

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(1) 115 I.T.R. 796.

(2) 131 I.T.R. 597.

(3) 82 I.T.R. 913.

(4) 56 I.T.R. 193.

(5) (1987) 167 I.T.R. 1.

(6) (1982) 138 I.T.R. 304.

Ravi Parkash v. State of Haryana (Amarjeet Chaudhary, J.)

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noticed above, should have been taken notice of and opportunity should have been granted to the guardians to sign the partnership deed on behalf of the minors. Since this procedure was not followed, and Income Tax Officer could not refuse registration.

(5) In the result, we are of the opinion that no question of law arises and the application of the Revenue is dismissed with no order as to costs.

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R.C.G.

*Before Amarjeet Chaudhary, J.*

RAVI PARKASH,—*Petitioner.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Civil Writ Petition No. 6039 of 1986*

December 16, 1988.

*Constitution of India, 1950—Arts. 14 and 226—Right to promotion—Ex-serviceman appointed Clerk from quota reserved for ex-servicemen—Benefit of emergency concession rules given—Ex-serviceman also member of Scheduled Caste—Further promotion—Ex-serviceman not clubbed with other Clerks belonging to Scheduled Castes for further promotion—Ex-serviceman—Whether entitled to claim benefits of being both ex-serviceman and Scheduled Caste.*

*Held*, that the reservation of posts for Scheduled Caste candidate being statutory, denial of this benefit to a Scheduled Caste employee at the time of promotion on the plea that he was initially selected as a general category candidate against a post reserved for Ex-serviceman, cannot be sustained in law. Hence it has to be held that an Ex-serviceman is entitled to claim twin benefits i.e. one being Ex-serviceman and other by virtue of belonging to Scheduled Caste and therefore, the promotion against the quota reserved for Scheduled Caste candidates should be given to him.

(Paras 5, 7).

*Civil Writ Petition under Article 226 of the Constitution of India praying that :*

(i) records of the case may be called for :