

COMMISSIONER OF INCOME-TAX, MADHYA PRADESH

v.

SIR HUKUMCHAND MANNALAL & CO.

July 20, 1970

[J. C. SHAH AND K. S. HEGDE, JJ.]

Income-tax Act, 1922, S. 26-A—Partnership including two partners representing interest of same H.U.F.—If can be registered—Whether members of H.U.F. suffer from any disability from entering into contract inter-se.

H and his son R were two out of the five partners of the respondent firm and represented the interest of a Hindu undivided family. The Income-tax Officer granted registration of the firm under s. 26A of the Income-tax Act, 1922. In 1954-55, he declined to grant such registration. The Appellate Assistant Commissioner confirmed his order on the ground that two coparceners could not represent the interest of the H.U.F. in a partnership. The Tribunal reversed this order and the High Court, upon a reference of the question whether the respondent firm could be granted registration, answered it in the affirmative.

On appeal to this Court,

HELD : Dismissing the appeal,

That a partnership in which two members of a coparcenary represent same beneficial interest of an H.U.F., may be validly registered under the Income Tax. [648 C-D]

Ram Laxman Sugar Mills v. Commissioner of Income-tax, U.P. and Anr. 66 I.T.R. 613, *P. K. P. S. Pichappa Chittiar & Ors. v. Chokalingam Pillai & Ors.* A.I.R. (1934) P.C. 192 and *Charandas Haridas & Anr. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad & Anr.* 39 I.T.R. 202, referred to.

The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into a contract *inter se* or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual : it is restricted only in the manner and to the extent provided by the Indian Contract Act. [648 H]

It is now settled law that in considering an application for registration of a firm, the Income-tax Officer is not concerned to determine in whom the beneficial interest in the share in the partnership vests. [649 B]

Commissioner of Income-tax v. Abdul Rahim & Co. 55 I.T.R. 651 and *Commissioner of Income-tax, Madras v. Bagyalakshmi & Co.* 55 I.T.R. 660, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1774 of 1969.

Appeal from the judgment and order dated February 12, 1965 of the Madhya Pradesh High Court in Misc. Civil Case No. 112 of 1963.

A *S. Mitra, R. N. Sachthey and B. D. Sharma*, for the appellant.

M. C. Chagla, R. N. Banerjee, A. K. Verma and O. C. Mathur, for the respondent.

The Judgment of the Court was delivered by

B **Shah, J.** A firm styled Sir Hukumchand Mannalal & Company was formed under a deed dated July 16, 1948 to carry on the business of "managing and selling agents" of Hukumchand Mills Ltd. Sir Hukumchand and his son Rajkumar Singh were two of the five partners of the firm. They represented the interest of the Hindu undivided family of Sir Hukumchand and his sons.
C On March 31, 1950 the property of the Hindu undivided family was partitioned and the interest of the family in the partnership was taken over by a private limited company styled Sir Sarupchand Hukumchand Ltd.

D For the assessment years 1950-51, 1951-52, 1952-53 and 1953-54 the Income-tax Officer granted registration of the firm under s. 26A of the Indian Income-tax Act, 1922. In 1954-55 the Income-tax Officer declined to grant registration. In appeal the Appellate Assistant Commissioner confirmed the order on the ground that two coparceners could not represent the interest of the Hindu undivided family in a partnership. The Tribunal reversed the order. They held that Sir Hukumchand and his son Rajkumar
E Singh were partners in the firm on behalf of the Hindu undivided family and there was nothing in law which prevented two or more coparceners of a Hindu undivided family representing the family from entering into a partnership with a stranger or strangers.

At the instance of the Commissioner of Income-tax the following question was referred by the Tribunal :

F "Whether in the facts and circumstances of the case the firm Hukumchand and Mannalal Company could be granted registration under s. 26A of the Act?"

G The High Court answered the question in the affirmative. The Commissioner of Income-tax has appealed to this Court with certificate granted by the High Court.

In *Ram Laxman Sugar Mills v. Commissioner of Income-tax, U.P. and Anr.*⁽¹⁾ this Court observed :

H "A Hindu undivided family is x x x x a "person" within the meaning of the Indian Income-tax Act : it is however not a juristic person for all purposes, and cannot enter into an agreement of partnership with either

(1) 66 I.T.R. 613.

another undivided family or individual. It is open to the manager of a joint Hindu family as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the manager and the other person, and by the partnership agreement no member of the family except the manager acquires a right or interest in the partnership. The junior members of the family may make a claim against the manager for treating the income or profits received from the partnership as a joint family asset, but they cannot claim to exercise the rights of partners nor be liable as partners."

This position in law was not disputed on behalf of the Commissioner. But it was urged that since two members of a coparcenary represented in the firm the same beneficial interest of a Hindu undivided family, and since they were incompetent to enter into a contract *inter se*, the partnership agreement could not be registered. There is no substance in that contention. In *P. K. P. S. Pichappa Chattiari & Ors. v. Chokalingam Pillai & Ors.*⁽¹⁾ the Judicial Committee observed, approving the observations made in Mayne's Hindu Law (9th Edn.) at p. 398 to the following effect :

"Where a managing member of a joint family enters into a partnership with a stranger the other members of the family do not *ipso facto* become partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian contract Act, in such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger : the partnership will be governed by the Act."

It is clearly enunciated that *one or more members* of a Hindu undivided family may enter into a contractual relation in the nature of a partnership with a stranger and they *qua* the stranger become partners. The view expressed by the Judicial Committee was approved by this Court in *Charandas Haridas & Anr. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad & Anr.*⁽²⁾.

The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into a contract *inter se* or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual : it is restricted only in the manner and to the extent provided by the Indian Contract Act. Partnership is under s. 4

(1) A.I.R. (1934) P.C. 192.

(2) 39 I.T.R. 202.

- A** of the Partnership Act the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all : if such a relation exists, it will not be invalid merely because two or more of the persons who have so agreed are members of a Hindu undivided family. It is now settled law that in considering an application for registration of a firm, the Income-tax Officer is not concerned to determine in whom the beneficial interest in the share in the partnership vests : *Commissioner of Income-tax v. A. Abdul Rahim & Co.*⁽¹⁾; *Commissioner of Income-tax, Madras v. Bagyalakshmi & Co.*⁽²⁾.
- B**

In our judgment, the High Court was right in answering the question in the affirmative.

- C** The appeal fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed.

(1) 55 I.T.R. 551.

(2) 55 I.T.R. 660.