

R.B. Angadi and Sons Vs. Commissioner of Income-tax, Mysore

LegalCrystal Citation : legalcrystal.com/370602

Court : Karnataka

Decided On : Oct-17-1968

Reported in : ILR1969KAR122; [1969]73ITR93(KAR); [1969]73ITR93(Karn)

Judge : A.R. Somnath Iyer and ;Ahmed, JJ.

Acts : [Income Tax Act, 1922](#) - Sections 26A

Appeal No. : Income-tax Referred Case No. 28 of 1967

Appellant : R.B. Angadi and Sons

Respondent : Commissioner of Income-tax, Mysore

Advocate for Def. : S.R. Rajasekhara Murthy, Adv.

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Judgement :

Somnath Iyer, J.

1. This is a reference under section 66(1) of the Indian Income-tax Act, 1922, sought by the assessee which is a firm in Hubli. There were four partners in the firm and in the opinion of the Tribunal, the instrument of partnership, on its interpretation, specified only the shares of the partners in the profit and not their shares in the losses. So, it reversed the order made by the Appellate Assistant Commissioner and restored that made by the Income-tax Officer who refused registration under section 26 A of the Act. The two question of law referred to us read :

'(1) Whether for obtaining registration under the provisions of the Income-tax Act, 1922, it is necessary for a firm to specify the shares of the partners in losses also in the instrument of partnership, besides specifying the shares of profits

(2) Whether, on a reasonable interpretation of clauses 3 and 7 of the instrument of partnership under which the assessee firm was constituted, could it be said that the shares of the partners in losses have not been specified in the deed disentitling if from getting registration under the Income-tax Act ?'

2. If the first question is answered in favour of the assessee, as in our opinion it should be, the answer to the second question becomes unnecessary. Our answer to the question should be in favour of the assessee since the enunciation made by this court in Sannappa v. Commissioner of Income-tax makes it clear that refusal of registration under section 26A is not possible in a case where the instrument of

partnership specifies the individual shares of the partners although it does not specify the shares in the losses. The education made in that decision was that if an instrument of partnership specifies the individual shares of the partners in the partnership profits, without more, it should follow that the losses, if any, in the partnership should also be shared in the same proportion in which the profits are to be shared by them in the absence of a contract to the contrary.

3. That being so, it was not possible for the Income-tax Officer to refuse registration in the present case and the Appellate Tribunal was in error in restoring the order made by him. Our answer, therefore, to the first question referred to us in favour of the assessee and that answer is that it is not necessary that an instrument of partnership should specify the shares of the partners in losses also in order to enable the firm to secure registration under the provisions of the Income-tax Act, 1922. It is not necessary to answer the second question and we, therefore, do not answer it.

4. The assessee will get his costs. Advocate's fee Rs. 250.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com