In Re: Bai Sakinaboo

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Court : Mumbai

Decided On : Aug-19-1931

Reported in : (1932)34BOMLR100

Judge : John Beaumont, Kt., C.J. and ;Rangnekar, J.

Appeal No. : Civil Reference No. 1 of 1931

Appellant : In Re: Bai Sakinaboo

Judgement :

John Beaumont, Kt., C.J.

1. In this case the learned Commissioner has referred to us two questions, viz.,

(1) Whether the partnership in question is not legal and the members thereof do not constitute a firm within the provisions of the Indian Contract Act and as contemplated by the Indian Income-tax Act, 1922 ?

and

(2) if the answer to the above is in the affirmative, whether the Income-tax Officer is justified in refusing to register the firm as applied for by one of its partners, vide Section 2(14) of the Indian Income-tax Act and Bales 2 to 6 there under?

2. The framing of these questions certainly suggests to my mind that the learned Commissioner was not quite certain as to whether the questions which he was

raising were questions of fact or of law. It is the duty of the Income-tax Officer to find facts clearly, and the duty of the Commissioner to state the facts and then to formulate the questions of law which arise upon them. In this particular case the question is whether there is a partnership or a firm which ought to be registered by the Income-tax Officer under the provisions of the Indian Income-tax Act. Whether there is a firm or not in existence is prima facie a question of fact, but may also involve a question of law. The Income-tax Officer ought to have found what the facts are much more clearly than he has done.

3. The position appears to be that the assessee Bai Sakinaboo Salebhoy inherited from her father a sum of Rs. five lakhs which she invested in certain shares which produced a large income, a sum of Rs. 74,000 odd. She sent to the Income-tax Officer for registration what is called an instrument of partnership, which does no more than this; it purports to show that the respective shares of the lady in question and her three minor children in the profits of the firm, known by the name and style of Sookinaboo Shalebhoy, are as specified. It does not show what the business of the firm is, or what the assets are, or what the profits are derived from. The instrument only states that the profits are divisible in certain shares between the lady and her three infant partners In my view no such firm can exist in law. The word 'partnership' is thus defined in Section 239 of the Indian Contract Act.

'Partnership' is the relation which subsists between persona who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them.

4. There is no finding here that the infants have agreed to combine their property, labour or skill, and the mere fact that the lady brings in certain property and proposes to share the income thereof with her children does not constitute a firm. The learned Income-tax Officer has found that no firm existed and that there is no business to be done by it. Then he rather vitiates this finding because he seems to think that the partnership deed is void because it is executed for the purpose of evading income-tax. The Assistant Commissioner also found that the whole affair is bogus and got up for the purpose of avoiding taxation of her income by the assessee. That reason is not a good reason at all, for if any of His Majesty's

subjects are clever enough to avoid taxation by legal means they are at liberty to do so; there is nothing wrong in so conducting one's affairs within the law as not to attract taxation. It is for the legislature, if they want to prevent evasion, to frame the language of the Act in sufficiently wide terms As I have stated above the facts are badly found in this case; but as far as we can ascertain them they seem to us to show that in point of fact there was no partnership. I do not think that the Court can really answer the questions, and we propose to make no order on the reference. There will be no order as to costs.

Rangnekar, J.

5. I agree.