

Cit Vs. P. Ravindran

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Court : Chennai

Decided On : Jul-15-1998

Reported in : (2002)174CTR(Mad)360

Appeal No. : T.C.P. No. 706 of 1997 A.Y. 1990-91 15 Februray/15 July 1998

Appellant : Cit

Respondent : P. Ravindran

Advocate for Pet/Ap. : C. V. Rajan, for the Revenue Philip Coorge & Senthilikumar, *for the Assessee*

Judgement :

R. Jayasimha Babu, J.

The Tribunal has in an elaborate order, considered all aspects of the matter including the consistent conduct of the assessee, and held that there was no partnership. The Tribunal has, in support of it's order, placed reliance on the following factors;

'(a) The instrument of partnership was executed on a stamp paper of Rs. 5 and hence cannot be considered as an instrument executed on the prescribed stamp paper.

(b) When there was a partnership between a limited company and other parties, there must be a resolution of the Board of Directors of the limited company authorising the entering into the partnership and no material had been brought on record to show that this mandatory procedure was complied with by the company.

(c) The profit or loss of the partnership firm were not considered by the partners in accordance with the deed in question.

(d) No materials were brought on record to show that the bank accounts standing in the name of the assessee as an individual had been closed and new accounts had been opened in the name of the firm.

(e) Applying the tests laid down by section 6 of the Partnership Act dealing with the determination of the existence of the partnership, there was no sufficient material to conclude that the business was run as a partnership between the assessee and the said limited company.'

2. Having perused the order of the Tribunal, we do not find any need to call for any reference. The question decided by the Tribunal was a question of fact in the light of the materials placed before it.

3. The question, which the revenue wants us to have referred, is :

'Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the business in the name of Associated Technologies, was not run as a partnership concern during the previous year relevant for assessment year 1990-91 ?'

Even the manner in which the question is phrased clearly brings out the fact that what was found by the Tribunal was that the concern was not run as a partnership concern in the previous year relevant to the assessment year. In the order of the Tribunal, the Tribunal has listed out the material considered by it. It included the balance sheet as on 31-3-1989, trading, P&L; a/c for the period from 1-8-1987 to 31-3-1989, fixed asset schedule during the period from 1-8-1987 to 31-3-1989, balance sheet as on 31-3-1990, trading P&L; a/c for the year ended 31-3-1990, fixed asset schedule during the period from 1-4-1989, to 31-3-1990, registration

certificate of Associated Technologies as a small scale industrial unit proprietary concern issued on 19-7-1990, the certificate give by Nedungadi Bank Ltd., on 28-2-1990, regarding the proprietary concern as also the statement given by the assessee P. Ravindran on 26-3-1993, and the statement given by his chartered accountant P.R. Ganapathy on 20-3-1993. The Tribunal has found that there was no material whatsoever to show that the company, which is alleged to have become a partner on 12-12-1988, had followed the procedures prescribed by law before entering into such partnership. The documents produced by the assessee clearly showed that the deed dated 12-12-1988, had never been acted upon. No balance sheet of the firm was found by the revenue, and the only material relied on by the revenue was the deed of partnership, which had been, according to the assessee, drawn up to satisfy the bankers, the State Bank of India. The material produced by the assessee clearly showed that even after the execution of the deed, the Associated Technology continued to be treated as a proprietary concern and the alleged partner had also declared only it's income for the 2 basis there was no account whatsoever of any business carried on by the firm.

4. It may well be, the State Bank of India has been misled by the assessee. But, that is a matter for the State Bank of India and the fact that it has perhaps been misled does not imply that a firm has in fact come into existence, even when the records show otherwise.

5. We do not, therefore, see any justification for calling for a reference. The tax case petition is dismissed.