

In Re: MartIn and Co.

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SooperKanoon Citation : sooperkanoon.com/882197

Court : Kolkata

Decided On : Jun-25-1929

Reported in : AIR1929Cal753

Appellant : In Re: MartIn and Co.

Judgement :

Rankin, C.J.

1. In order to dispose of the questions referred to us, it is necessary that we should refer the case back to the Commissioner to make certain additions thereto or alterations therein as provided by Clause (4), Section 66, Income Tax Act of 1922. The observations which I propose to make now are entirely directed to making clear, so far as I can, the points upon which further findings are required at the hands of the Commissioner.

2. It appears that there is a firm called Messrs. Martin and Company which is governed by certain articles of partnership in writing. There seem to be three such documents. These documents have not been made part of the case stated They ought to be, made part of the case stated. It is not exactly clear to me whether as a result of these three documents that firm is shown to have had 7 partners or only 5, The documents will make that matter clear. In 1927, certain persons bought a business which was being carried on under the name and style of Burn and Company. From the documents which have been made part of the case, it would rather appear that the persons who bought that business were five in number, and

it would further appear that these five persons became partners for a day at least with the original proprietors of the firm of Burn and Company. The terms upon which, the original proprietors having gone, the new proprietors-were carrying on the business are defined in the documents dated 1st February 1929 by a reference to the documents which govern the firm of Messrs. Martin and Company. The words 'so far as applicable to this present partnership' appear in the document of 1st February 1927. That is a matter which has not been discussed by the Commissioner in the case stated at all. That matter-ought to be dealt with. He ought to give any facts in his judgment bearing, upon the question as to the weight to be given to that reference in Clause (3) of the agreement of 1st February 1927.

3. Again, in the document of 28th September 1927, which is an agreement to which the five purchasers to whom I have referred are parties, I find that in Clause (4) two other people are suddenly described as partners. It seems to be necessary that it should be ascertained, how that comes about. At the end of that clause, there is a statement to the effect that these two gentlemen being the senior assistants are entitled in pursuance of the partnership deed of Messrs. Martin and Company to participate in the net profit of Burn and Company. The Commissioner ought to consider that, upon the question whether or not in substance and in truth the assets which had belonged to Burn and Company were being bought by the firm of Martin and Company or whether in substance and in truth there was an entirely different firm (it may be composed of the same partners and it may be that the partners were interested in the same shares but as a matter of intention of the parties, an entirely different partnership). The Commissioner has not found whether there is or is not truth in the statement which appears to have been the case of the assessee, that the firm of Burn and Company was bought not with any funds belonging to the firm of Martin and Company at all but with other funds being the private property of the individual persons who were partners of Messrs. Martin and Company. A finding as to that is very necessary.

4. In remitting the case to the Commissioner, I would point out not by way of deciding this case but entirely for the guidance of the Commissioner that this case may ultimately have to be decided upon findings which do not at present appear in

the case stated. The proposition that the same persons in the same shares cannot for income-tax purposes be partners of two entirely separate firms is a highly abstract proposition. It may or may not be correct but I am not prepared as at present advised to proceed upon so very general a principle without a careful enquiry into the concrete case and into the matters above mentioned. It may turn out that the case depends on the question of fact whether the two firms were entirely separate-a question of fact including the question of intention. It is necessary that we should know whether in substance and in truth the partners as part of the business of Martin and Company bought up certain assets (in which case the fact that these assets went by a different name would have no importance Whatever) or whether, on the other hand, it was an entirely separate venture not intended to be any part of the business of Martin and Company or to have any connexion with Martin and Company. If the fact is that certain persons-be they 5 or 7 put their hands in their pockets to buy the assets of Burn and Company with the intention of running a firm which would have nothing to do with Messrs. Martin and Company, then the Commissioner should in justice to the assessee give a finding to that effect. Looking upon it in that way, it seems to me desirable that this case should be sent back to the Commissioner to make such additions thereto or alterations therein as are required to meet the points which in this judgment I have mentioned.

C.C. Ghose, J.

5. I agree.

Buckland, J.

6. I agree.