

INCOME-TAX REFERENCE.

Before Rankin C.J., C. C. Ghose and Buckland J.J.

In re RAMLAL MURLIDHAR.*

1930
Dec. 10.

Income-tax—Registration of firms—Instrument constituting firm, if must be complete—Indian Income-tax Act (XI of 1922), s. 2 (14).

Under the Indian Income-tax Act, for a firm to be registered, there must be a firm constituted under the instrument, but there is no implication that a complete instrument only is valid for the purposes of registration, that is to say, an instrument which does not require supplementing by other evidence but contains, in itself, the complete agreement constituting the partnership and by itself solely, operates to create the partnership.

Bulchand Keshavdas v. Commissioner of Income-tax (1) approved.

INCOME-TAX REFERENCE.

Relevant facts appear from the judgment.

Sudhir Roy for the assesseees. The section does not say that the document must be signed. The main question is whether, in truth and fact, there is a partnership. I adopt the observations of the Additional Judicial Commissioner of Sind in the case of *Bulchand Keshavdas v. Commissioner of Income-tax* (1).

Radhabinode Pal for the Income-tax Department. The section and rule 2 require that the firm must be constituted under the particular instrument. The document must show that all the partners agreed to the terms of the partnership. If anything else is necessary to show the proper constitution of the partnership, then the instrument is outside section 2 (14).

RANKIN C. J. In this case, it appears that three persons together with a fourth, the mother of one of them, were carrying on a business in co-partnership

*Reference No. 13 of 1930 under section 66 (2) of Indian Income-tax Act.

(1) [1930] A. I. R. (Sind) 301.

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as dealers in piece-goods and commission agents under the name and style of Ramlal Murlidhar. By a memorandum of agreement dated the 30th day of April, 1928, and made between the three persons to whom I have referred and between them only, it was nevertheless recited that the parties to the agreement together with one Musammam Rajo, the mother of Ramlal, were carrying on business in co-partnership as I have stated. The instrument then went on to express an agreement that the partnership business should continue and that the profits of the business should belong to the partners in certain shares—the lady, Musammam Rajo being declared to have one equal twentieth part or share therein. By another clause, it was provided that, if there was any loss, the loss was to be paid and borne by the partners rateably and in proportion to their respective shares in the profits of the business. The instrument was executed by the three partners mentioned above and not by the fourth—Musammam Rajo. Thereupon, it was tendered to the Income-tax Officer as an instrument such as is contemplated by the fourteenth clause of section 2 of the Act, and, although all the parties to the instrument had executed it, the Income-tax authorities refused to accept it for reasons which are given by the Commissioner of Income-tax as follows:—

A partnership, to be valid does not require its terms to be embodied in an instrument. Moreover, a defective instrument may be supplemented by other evidence, such as conduct of the partners, to establish and define those terms. But the Indian Income-tax Act and the rules framed thereunder make provision for the registration of those firms only that are constituted under instruments of partnership and of no other firms. It is implied, in my opinion, that a complete instrument only was intended to be valid for registration, that is to say, an instrument which does not require supplementation by other evidence, but contains in itself the complete agreement constituting the partnership and by itself solely operates to create the partnership. I do not mean to say that an instrument of partnership must consist of one document only.

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But an instrument must consist of a document or documents, and no such acceptance in writing by the fourth partner being forthcoming, the so-called instrument of partnership remains an incomplete instrument.

In my opinion, it is not correct to hold, on the instrument before us, that, for the reasons given, it is to be rejected under the fourteenth clause of section 2.

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No doubt, whether we look to the Act or to the rules made thereunder, there must be a firm constituted under the instrument; but when we come to ask ourselves what is sufficient to satisfy the requirement of the firm being constituted under the instrument, I am not prepared to say with the Commissioner that it is implied that a complete instrument only is intended to be valid for registration, that is to say, an instrument which does not require supplementing by other evidence but contains in itself the complete agreement constituting the partnership and by itself solely operates to create the partnership. It appears to me to be not impossible that a firm should be constituted under an agreement, although the agreement has not been executed by all the partners. No doubt it would be very reasonable to have this requirement and I need express no opinion as to whether it is open under the rule-making power given by the Act that such requirement should be insisted upon. I am unable to say that either the Act or the rules go so far as the Commissioner of Income-tax has in this case considered. I say nothing by way of objection to the proposition that the Income-tax Officer may have the right to satisfy himself that the transaction evidenced by the instrument is a real thing. But, in my opinion, if the Commissioner of Income-tax comes to the conclusion that before her death Musammat Rajo had assented to this instrument and that when it was put forward for registration it was put forward by her along with the other partners to be registered, it is such a document as may be admitted to registration under the Indian Income-tax Act.

We have been referred to a decision of the Court of the Judicial Commissioner of Sind: *Bulchand Keshardas v. Commissioner of Income-tax* (1). Mr. Roy has adopted the observations of the Additional Judicial Commissioner, Mr. Rup Chand, in that case as part of his argument. It appears to me that the reasoning of the learned Additional Judicial

(1) [1930] A. I. R. (Sind) 301, 303 (Column 2).

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Commissioner supports the view which I have expressed.

The assessee should have their costs of this Reference.

GHOSE J. I agree.

BUCKLAND J. I agree.

Attorneys for assessee: *K. K. Dutt & Co.*

Advocate for Income-tax Department: *R. B. Pal.*

S. M.