**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**(1) Income Tax Appeal No.202 of 2013**
**Date of Decision: 30th January, 2015**

**M/s Baldev Singh & Co.**

**...Appellant**

**Versus**

**Commissioner of Income Tax, Aayakar Bhawan,**
**Rishi Nagar, Ludhiana, Punjab.**

**...Respondent**

**(2) Income Tax Appeal No.203 of 2013**

**M/s Baldev Singh & Co.**

**...Appellant**

**Versus**

**Commissioner of Income Tax, Aayakar Bhawan,**
**Rishi Nagar, Ludhiana, Punjab.**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA**
**HON'BLE MR. JUSTICE AMIT RAWAL**

**Present: Mr. S.K.Mukhi, Advocate,**
**for the appellant.**

**Ms. Savita Saxena, Advocate,**
**for the respondent.**

***RAJIVE BHALLA, J.***

By way of this order, we shall decide Income Tax Appeal Nos.202 and 203 of 2013, as they pertain to the same assessee but to different assessment years.

Counsel for the appellant submits that in the absence of any proof of the existence of a firm known as M/s Baldev Singh & Co. whether in the shape of a partnership deed or otherwise and any evidence about Baldev Singh's share in the firm, findings recorded on mere presumptions by the Assessing Officer, the CIT(A) and the ITAT, that Baldev Singh was a partner of M/s Baldev Singh & Co. are illegal and contrary to the evidence on record. Counsel for the appellant further submits that Section 23 of the Income Tax Act (hereinafter referred to as 'the Act') defines a firm as having the same meaning as assigned under the Indian Partnership Act, 1932. The revenue was required in the discharge of its onus, to prove the existence of a partnership of which Baldev Singh was a partner. A perusal of the record reveals that the revenue has not been able to produce any partnership deed or document that proves that Baldev Singh was a partner of M/s Baldev Singh & Co.. The mere fact that Baldev Singh may have signed certain documents during auction proceedings, on behalf of the firm does not raise inference that Baldev Singh was a partner. Baldev Singh was an employee of Pritam Singh and signed documents on behalf of Pritam Singh. It was for this reason that Pritam Singh made a disclosure of income from the liquor business. The initial order passed by the CIT(A) referring to the modus of excise vend contractors, namely, putting forward fictitious persons was wrongly reversed by the Tribunal in the first round of litigation. The CIT(A) had held that it is well known in the liquor trade that licences are obtained in benami names and the real beneficiary remains behind the scenes. As there was no evidence of the role of Baldev Singh as a partner, the ITAT committed an error in setting aside the order passed by the CIT(A). The mere fact that Baldev Singh may have signed certain documents pertaining to the liquor vends does not raise inference of a partnership. The main person was and is Pritam Singh, whose statement that he is partner to the extent of 25% and that Baldev Singh is a partner to the extent of 75% has been wrongly accepted by the revenue without referring to any partnership deed or any other documents that would prove that Pritam Singh was partner to the extent of 25% and Baldev Singh, a partner to the extent of 75%. The entire proceedings are based upon the statement made by Pritam Singh, who has cleverly exonerated himself and placed the entire responsibility upon Baldev Singh. The statement by a third person as held in ***S.R.Batliboi & Co.*** ***v. Departemtn of Income Tax(Investigation), Civil Writ Petition No.9479 of 2007, decided on 27.05.2009,*** cannot be read against the appellant.

Counsel for the appellant also relies upon ***M.Rajgopal v. K.S.Imam Ali, AIR 1981 Kerala 36*** and ***M/s Mensa Ram & Saons v. M/sJanki Das Om Parkash, AIR 1984, 267*** to submit that a person who claims to be a partner cannot apportion liability to another without reference to any document and mere signatures on certain documents would not raise inference of a partnership. Counsel for the appellant also submits that the evidence on record, the search conducted on the premises of Pritam Singh, his surrender of income etc., prove that Baldev Singh was a mere employee and his name was used by Pritam Singh.

Counsel for the appellant has framed seven questions, in all, which read as follows:-

> "I). Whether, on the facts and circumstances of the case, ITAT was justified in reversing a well versed

order of CIT(A) in original appeal and thereby holding Mr. Baldev Singh as partner of the appellant firm without appreciating the modus operandi in the liquor trade as explained by one of the Assessing Officer of the same area Annexure A-8 and thereby defying the judgment of Hon'ble Supreme Court of India in the case of M/s Berger Paints India Ltd. v. CIT, 266 ITR 99 (SC)?

II) Whether, on the facts that circumstances of the case, ITAT was justified in reversing a well versed order of CIT (A) in original appeal and thereby holding Mr. Baldev Singh as pertner of the appellant firm by simply relying upon the statement of Mr. Pritam Singh who was the actual beneficiary and owner of the appellant firm without confronting any material or documents relied upon as found from search operations of said Mr. Pritam Singh which is against established principles of law as laid down by this Hon'ble Court in the case of CIT Patiala v. Radhey Sham Sita Ram 22 I.T Rep 667 (P&H) wherein it was held that an addition made on the basis of a statement of a person without allowing opportunity to cross examine cannot be confirmed?

III). “Whether, on the facts and circumstances of the case, ITAT was justified in reversing a well versed order of CIT (A) in original appeal and thereby holding Mr. Baldev Singh as partner of the appellant firm without appreciating the provisions of law as per Section 184 and 185 of the Income Tax Act, 1961 and other evidences on record?

IV). Whether, on the facts and circumstances of the case, ITAT was justified in reversing a well versed order of CIT (A) in original appeal and thereby holding Mr. Baldev Singh as partner of the appellant firm without appreciating the provisions of law as laid down even under the provisions of the Partnership Act, and its binding nature as so held by Hon'ble Kerala High Court in the case of **M.Rajgopal v. K.S.Imam Ali, AIR 1981 Ker 36** and by Hon'ble Allahabad High Court in the case of **Mansa Ram and Sons v. M/s Janaki Das Om Parkash, AIR 1984 All 267?**

**V).** Whether, on the facts and circumstances of the case, ITAT was justified in reversing a well versed order of CIT (A) in original appeal and thereby holding Mr. Baldev Singh as partner of the appellant firm and thereby confirming the quantum of addition made on the basis of surrender by one Mr. Pritam Singh who was not even partner in the appellant firm?

VI). Whether, on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidences on record thus unsustainable in law?

VII). Whether the ITAT has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue under Income Tax Act, 1961?"

A perusal of the substantial questions of law reveal that questions no.(I) to (V) pertain to the earlier order dated 31.03.2009 passed by the ITAT, remitting the matter to the Assessing Officer by reversing the order passed by the CIT(A) dated 11.03.2008. Questions No.VI and VII pertain to orders passed after remand but all these questions essentially pertain to and impugn the finding that Baldev Singh is a partner of M/s Baldev Singh & Co.

Counsel for the revenue, however, submits that the question whether Baldev Singh was a partner or not is a pure question of fact. The findings recorded by the ITAT are based upon a considered appraisal of facts on record particularly documents signed by Baldev Singh, before excise authorities and, therefore do not give rise to any substantial questions of law much less the questions framed by the appellant. Baldev Singh has not denied his signatures on documents pertaining to M/s Baldev Singh & Co. The partnership deed, was in possession of partners but as Baldev Singh has not produced the partnership deed, an adverse inference has to be drawn against him. The inference is fortified by documents received from the excise department bearing Baldev Singh's signatures, on behalf of M/s

Baldev Singh & Co., thereby proving that Baldev Singh was a partner and not an employee has urged. The findings recorded in the impugned orders are pure questions of fact that do not give rise to any question of law.

We have heard counsel for the parties, perused the impugned orders, as well as orders passed in earlier proceedings.

The seminal point that would determine the fate of these appeals is whether there is any evidence on record that would prove or raise an inference that Baldev Singh was a partner of M/s Baldev Singh & Co.. The Assessing Officer has held that Baldev Singh was a partner of Baldev Singh & Co. The findings are pure findings of fact but as counsel for the appellant is vehement in his contentions that Baldev Singh has been illegally held to a partner or that his name has been misused by Pritam Singh. We have though it fit to appraise the impugned orders. The CIT(A) has affirmed this finding. The ITAT has affirmed both these findings. of fact recorded by the CIT(A) and .

The appellant-firm Baldev Singh & Co., is based in Samrala, Punjab. Baldev Singh is also a resident of Samrala. A search was conducted at the residence of one Pritam Singh, on 25.08.1989, where certain incriminating documents were recovered. Pritam Singh made a disclosure of Rs.1,90,000/- from liquor business for assessment year 1985-86 and Rs.1,72,000/- for assessment year 1986-87, amongst other disclosures. Pritam Singh also made a statement that the liquor vends at Ambala were allotted to M/s Baldev Singh & Co. of which Baldev Singh was 75% share holder, whereas Pritam Singh and his brothers Surjit Singh and Rajinder

Singh were share holders of the balance 25%. A case was initiated against the Baldev Singh & Co., through Baldev Singh, under Section 148 of the Income Tax Act, 1961, for assessment years 1985-86 and 1986-87. Baldev Singh, however, did not put in appearance during assessment proceedings and, therefore, an order dated 05.03.1998, was passed under Section 143(3)/144 of the Act assessing an income of Rs.1,90,000/-. The Assessing Officer, thereafter, attached two acres of agricultural land and standing crops, belonging to Baldev Singh. Baldev Singh filed a writ petition wherein after passing certain interim orders, the writ petition was dismissed to enable the appellant to avail his remedy under the Act. Baldev Singh filed an appeal before the CIT(Appeals), which was allowed, vide order dated 11.03.2008, by holding that Baldev Singh is not to be treated as a partner of M/s Baldev Singh & Co., as no partnership deed is forthcoming and this fact should have been disclosed in the initial statement made by Pritam Singh during search on 25.08.1989. The revenue filed an appeal before the Income Tax Appellate Tribunal. The Tribunal set aside the order passed by the CIT(A) and remanded the matter to the Assessing Officer by holding that as onus to establish whether Baldev Singh was a partner in M/s Baldev Singh & Co., lies upon the revenue, it is necessary that the record of the auction of liquor vends conducted by the Excise and Taxation Department, Haryana, be requisitioned, as neither party has produced the partnership deed. Baldev Singh did not file any further appeal.

The Assessing Officer requisitioned the relevant record from the Excise and Taxation Department, Ambala and after perusing the record held that as all relevant documents pertaining to the auction and the allotment of liquor vends are signed by Baldev Singh, he is a partner of M/s Baldev Singh & Co. The appellant filed an appeal before the Commissioner of Income Tax(A), which was dismissed on 22.08.2012. The appellant, thereafter, filed an appeal before the Income Tax Appellate Tribunal, Chandigarh, which was dismissed on 14.01.2013.

Baldev Singh does not deny his involvement in the aforesaid firm but asserts that he was a mere employee, who was receiving a salary but his name was used by Pritam Singh, at the time of bidding and allotment of liquor vends. A perusal of the facts reveals that after remand by the ITAT, the Assessing Officer requisitioned the record from the Excise and Taxation Department, Haryana. A thorough examination of the record revealed that documents relating to the auction and the allotment of liquor vends bear the name of Baldev Singh son of Kashmira Singh, resident of Samrala, as the successful bidder and are signed by Baldev Singh. The Assessing Officer noticed that Form no.M-14 contains the name of Baldev Singh, the certificate issued by the Presiding Officer, records that the vends have been sold to Baldev Singh, for a license fee of Rs.10,25,00/- and the certificate recording announcement relating to the auction also bears the names of Baldev Singh and these documents are signed by Baldev Singh. A relevant extract from this order reads as follows:-

"11. It is pertinent to mention here that as per attested copies of auction and allotment records supplied by the concerned competent authorities of Excise and Taxation Department, Sh. Baldev Singh s/o Sh. Kashmira Singh, Resident of Samrala is one of the successful bidder along with others. The documents supplied by the Excise and Taxation Deptt. Contain the signatures of Sh. Baldev Singh (the assessee) along with others at that time before the Excise Authorities. The attested documents received from Excise & Taxation department are self explanatory to establish that Sh. Baldev Singh is one of the partner in M/s Baldev Singh & Co., Liquor Contractor, Ambala Cantt, H.O. Samrala during the F.Ys 1984-85 & 1985-86. The documents received from the Dy. Excise & Taxation Commissioner (Excise) Deptt., Ambala are annexed to this order as part of the order. (Nine Pages). The relevant contents of the documents received from the Excise & Taxation Department are discussed here under:-

<u>F.Y.1984-85</u>

i) Form No.M-14 : Contained name, percentage & address of the persons to whom the vend sold

As per this Form, Sh. Baldev Singh S/o Sh. Kashmira Singh, V & P.O. Samrala, Ludhiana is one of the person to whom the vend sold.

ii) **Certificate by Presiding Officer of the Excise & Taxation Department for the sale of Liquor Shop in favour of the persons:-**

As per this certificate Sh. Baldev Singh is one of the person to whom the vend sold.

On the same certificate, Sh. Baldev Singh as one of the successful bidder (duly signed by Sh. Baldev Singh), it has been certified that-I/we do hereby undertake to license fee of Rs.10,25,000/- (in words) (Ten Lacs Twenty Five Thousand only) fixed for the Auction on 16.03.1984 for the C.L. Liquor Vend B.C. Bazar & R.A. BazarAmbala Cantt for the year 1984-85 in accordance with the announcement made at the time of auction.

Signed
Harjit Singh
**Baldev Singh**

Attested IDENTIFIED Signature of the successful bidder

Sd/- Sd/-

(PRESIDING OFFICER) Asstt. Excise & Taxation Officer, Ambala (Excise)

iii) **Certificate regarding announcement relating to the auction:-**

Name of the vend (1) B.C.Bazar, Ambala Cantt (2) R.A.Bazar, Ambala Cantt.

Certified that the announcement relating to the auction of Country Liquor vend for the year 1984-85 in Ambala District have been read over to us before thecommencement of auction today the 16th March, 1984.

Sd/-
(**Baldev Singh)**
Signature of the successful bidder
Sd/-
(Harjit Singh)

**F.Y. 1985-86**

As discussed above, for the F.Y. 1985-86 also Sh. Baldev Singh has been declared as one of the successful bidder along with others and the relevant papers have been signed by him before the Excise & Taxation Department authorities at the time of auction and allotment of vends, in the same manner and similar type of certificates.

"12. Keeping in view of all the facts, evidence in the shape of auction and allotment records supplied by the Excise and Taxation Department, it is evident that Sh. Baldev Singh is partner in M/s Baldev Singh & Co., Liquor contractor, Ambala Cantt, H.O Samrala during the F.Y 1984-85 and 1985-86. The objection raised by the counsels of the assessee that the assessee Sh. Baldev Singh never participated in Excise proceedings is not accepted, in view of the concrete evidence in the shape of record of auction and allotment of liquor vends conducted by the Excise and Taxation Department in Ambala District during the F.Y. 1984-85 and 1985-86 as discussed above. In view of these facts and evidences, it is held that Sh. Baldev Singh is a partner in M/s Baldev Singh & Co., Liquor contractor, Ambala Cantt. H.O.Samrala during the F.Y. 1984-85 & 1985-86."

The Commissioner of Income Tax (A), examined the matter in its entirety and held that the Assessing Officer was justified in placing reliance upon the record of the auction of liquor vends, conducted by the Excise and Taxation Department, Ambala to affirm the status of Baldev Singh as a partner of M/s Baldev Singh and Co..

The ITAT also examined the entire record, considered the submissions made by the appellant and after recording that even counsel for the assessee has conceded that documents requisitioned from the Excise and Taxation Department bear the signatures of the appellant went on to hold that the assessee's plea that he had merely lent his name to obtain the license, cannot be accepted as the assessee himself acted as a contractor, signed all relevant papers before the Excise Department, took a contract and, therefore, has to be held liable as a partner. The ITAT, the CIT(A) and the Assessing Officer, in our considered opinion, have rightly placed reliance upon this unrebutted documents to record findings of fact that Baldev Singh was a partner of Baldev Singh & Co. A finding of fact can only be set aside if it is perverse or arbitrary, is contrary to law or has been recorded by ignoring relevant evidence. A perusal of the impugned orders and the material on record does not persuade us to hold that the findings that Baldev Singh is a partner are in any manner, perverse or arbitrary, contrary to record or in violation of any legal principle.

We are conscious of the fact that in the liquor trade vends are taken on benami names but in the absence of any evidence that Baldev Singh was a mere employee, whose name was used or any evidence that Baldev Singh was an employee of Pritam Singh, cannot discard the record pertaining to auction of liquor vends particularly as it is signed by Baldev Singh. Baldev Singh's primary plea is that he was an employee of Pritam Singh or that Pritam Singh misused the former's name. The plea, however, remains unsubstantiated by reference to any relevant record. The onus to prove his status as an employee lay upon Baldev Singh, to rebutt the presumption that arises against him from his signatures appearing on all relevant documents pertaining to the allotment of vends. Apart from his bald statement that he was a mere employee or the assertion that he lent his name to Pritam Singh, there is no evidence to support these assertions. The absence of a partnership deed recording the appellant as a partner, is irrelevant, as the firm bears Baldev Singh's name and is based in Samrala. Baldev Singh is a resident of Samrala. All relevant documents pertaining to the auction of liquor vends are signed by the appellant. Baldev Singh has, admittedly, participated in the auction, was allotted liquor vends, has signed all relevant documents and does not deny that he participated in the business, though, allegedly as an employee. The onus to prove this fact having not been discharged, we cannot speculate merely on the basis of malpractices is the liquor business to accept his submissions. The fact that Pritam Singh may not have been called as a witness or examined or did not make this allegation in his initial statement, is also irrelevant as Baldev Singh has admitted his signatures on all relevant documents executed at the time of allotment of the vends and has failed to adduce evidence in support of his plea that he was a mere employee and also renders irrelevant the principle that statement of one cannot be read against another to prove a partnership.

The first five questions as already noticed, relate to an earlier order passed by the CIT(A) which was reversed by the ITAT, by remanding the matter to the Assessing Officer. Baldev Singh accepted this order, participated in proceedings before the Assessing Officer and filed a response to queries raised after the record of the Excise and Taxation Department after was summoned and, therefore, cannot turn the clock back by challenging this order. It would also be appropriate to point out that the earlier order passed by the CIT(A) was set aside as relevant record pertaining to liquor vends had not been requisitioned. The Assessing Officer requisitioned the record of the Excise Department and upon finding that all relevant documents were signed by Baldev Singh, held that Baldev Singh was a partner of Baldev Singh & Co. The first five questions are, therefore, answered against the appellant.

The other two questions are general in nature and as inference drawn against Baldev Singh is based upon record requisitioned record from the Excise and Taxation Department, the ITAT was fully justified in holding that Baldev Singh was a partner of Baldev Singh & co.. The finding of fact does not suffer from any legal flaw. The questions of law, in our considered opinion, are mere questions of fact, The appeals are consequently dismissed with no order as to costs.

**(RAJIVE BHALLA)**
**JUDGE**

**(AMIT RAWAL)**
**JUDGE**

**30th January, 2015**
**nt**