(1957) 04 AHC CK 0004

In the Allahabad High Court

Case No : Special Appeal No. 170 of 1954

Abdul Hamid Khan APPELLANT

Vs

Kanpur Electric Supply Administration and Another RESPONDENT

Date of Decision : 04-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7

Citation : AIR 1957 All 650 : (1957) 27 AWR 716

Hon'ble Judges : Desai, J;Beg, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhargava, J.—The assessee, Mannilal Sagarmal, during the course of the assessment for the year 1943-44, made an application for registration of the firm u/s 26-A of the Indian Income Tax Act. The Income Tax Officer issued a notice u/s 22(4) Of the Act requiring the assessee to produce certain accounts and documents on the date fixed. The accounts and documents were not produced and on the facts before him, the Income Tax Officer held that they had been deliberately suppressed. Thereupon, the Income Tax Officer held that the notice had not been complied with and the assessee was liable to assessment u/s 23 (4) of the Act. Consequently, he refused registration and rejected the application u/s 26-A of the Act.

The assessee appealed against this order but the Appellate Assistant Commissioner of Income Tax dismissed the appeal holding that no application had been made u/s 27 of the Act to the Income Tax Officer for cancellation of the Assessment and, therefore, would be presumed that the assessee had no reasonable cause for non-compliance with the notice u/s 22(4) of the Indian Income Tax Act, The assessee went up in appeal before the Income Tax Appellate Tribunal. This appeal was also dismissed on the view that, though the assessment had been made u/s 23(4) of the Act, no application u/s 27 had been made to the Income Tax Officer for cancellation of the assessment, presumably, because the assessee had realised that he had no reasonable cause for not complying with the notice u/s 22(4) of the Act.

The Tribunal further proceeded to hold that u/s 23(4) the Income Tax Officer had power to refuse to register a firm and they did not see any reason to interfere with the discretion of the Income Tax Officer in this respect after taking into consideration "all the facts of this case. In these circumstances, the assessee moved the Tribunal u/s 66(1) of the Indian Income Tax Act and the Tribunal has referred the following two questions for our opinion:

"Q. 1. Whether, in the circumstances of the case as stated above, the Tribunal could in law refuse to interfere with the discretion of the Income Tax Officer exercised in refusing to register the firm u/s 26-A of the Income Tax Act?

Q. 2. Whether, in the circumstances of the case as stated above, the refusal of registration u/s 26-A, I. T. Act was legally permissible "

2. The facts, disclosed by the statement of the case mentioned above, show that both the Income Tax Appellate Tribunal and the Appellate Assistant Commissioner of Income Tax, in deciding the appeal of the assessee against the refusal of the Income Tax Officer to register the firm, relied mainly on the circumstance that the assesses had no application u/s 27 of the Indian Income Tax Act for cancellation of the assessment. In proceeding in this manner, they failed to notice the distinction that the income Tax Act provides for between an appeal against a best judgment assessment made u/s 23(4) end an appeal against refusal to register u/s 23(4).

In the case of a best judgment assessment u/s 23(4), provision has been made u/s 27 for an application for cancellation of the assessment on certain grounds including the ground that the assessee had been prevented by sufficient cause from making the return required by Section 22, or from complying with the requirements of a notice issued u/s 22(4) of the Act. An order rejecting such an application is separately appealable and, consequently, it has been held that if an assessee does not take such objections by an application u/s 27 as are open to him under that provision of law, he cannot challenge the assessment itself on the same grounds when he files an appeal against the quantum of assessment made u/s 23(4).

On the other hand there is no provision in the Act by which the assessee is given a right to make an application asking for cancellation of the order refusing to register the firm on any ground whatsoever. In the case of an order refusing to register a firm passed u/s 23(4), the only remedy provided is an appeal u/s 39(1), Consequently, if an assessee happens to be satisfied with the best judgment assessment made u/s 23(4), he is not required to make any application u/s 27 but there may be a case where he may be dissatisfied with the order refusing to register the firm and, in that case, he can challenge the order of the Income Tax Officer by an appeal against the refusal to register the firm.

In that appeal, he can challenge the order on any ground whatsoever including grounds on which he could have asked cancellation of the assessment u/s 27. The mere fact that he did not file an application u/s 27 asking for cancellation of the assessment cannot stand in the way of his challenging the order of refusal to register the firm on the same grounds. Consequently, when an appeal is filed against an order passed u/s 23(4) refusing to register a firm and the assessee comes up in appeal, the appellate authorities have to examine the finding given by the Income Tax Officer that the assessee had committed one of the defaults mentioned in Section 23(4) irrespective of the fact whether any application u/s 27 had or had not been made for cancellation of the assessment no presumption could be taken against the assessee from the circumstance that he had made no application u/s 27 for the cancellation of the assessment as he may have failed to make that application for reasons other than that he had no reasonable explanation for his default.

In the particular case before us, our attention has been directed to the fact that the best judgment assessment u/s 23(4) was actually challenged by the assessee, on the ground that he had not failed to comply with the notice issued u/s 22(4), by an appeal against the assess. Blent order instead of by an application u/s 27. It is true that he was wrongly advised in seeking his remedy by an appeal on such a ground against the assessment instead of moving the Income Tax Officer u/s 27.

The facts, however, show that the assessee did want to satisfy the Income Tax authorities that he had sufficient cause for not complying with the notice u/s 22(4) and the presumption, which was made by both the Appellate Assistant Commissioner of Income Tax and the Income Tax Appellate Tribunal that the assessee had realised that he had no reasonable cause for not complying with the notice, cannot possibly arise in these circumstances. It appears that the Appellate Assistant Commissioner of Income Tax and the Income Tax Appellate Tribunal were unduly obsessed by the fact that the assessee had made no application u/s 27 for the cancellation of the assessment.

That circumstance should have been ignored and in the appeals against refusal to register the firm they should have independently gone into the question which had been raised by the assessee viz. that he had sufficient cause for not complying with the notice given by the Income Tax Officer, in falling to do so, the Income Tax Appellate Tribunal clearly committed an error and their decision based on this view is incorrect in law. Our answer to the first question, therefore, is that the Income Tax Appellate Tribunal were not Justified in refusing to interfere with the order, of the Income Tax Officer refusing to register the firm u/s ,26-A of the Indian Income ,Tax Act on the ground on which they based their order and the Income Tax Appellate Tribunal should have gone into the question on merits and dealt with the grounds taken before them by the assessee to challenge the order of the Income Tax Officer.

3. The Income Tax Appellate Tribunal, in their order, added that they did not see any reason to interfere with the power of the Income Tax Officer in refusing to register the firm after taking into consideration all the facts of the case. The statement of the case would indicate that neither the Income Tax Officer nor the Income Tax Appellate Tribunal gave any reasons arising out of the circumstances of the case which could justify refusal to register the firm. Learned counsel for the Department read out to us a portion of the order passed by the Income Tax Officer u/s 26-A of the Indian Income Tax Act re fusing to register the firm but the facts given in that part of the order of the Income Tax Officer have not been made a part of the statement of the case and even the Income Tax Appellate Tribunal, in their order, have not expressed any opinion indicating that they agreed with those reasons given by the Income Tax Officer and that consequently, they held the exercise of his discretion to be proper.

In fact, the Tribunal do not appear to have gone into the question of the proper or improper exercise of the discretion by the income Tax Officer in refusing to register the firm because of their view that no application had been made u/s 27 to challenge the best judgment assessment and consequently, it could be presumed that the assessee had no reasonable cause for not complying with the notice u/s 22(4).

We have indicated in our answer to the first question that the Tribunal should re-examine the point whether the Income Tax Officer was at all justified in proceeding u/s 23(4) of the Indian Income Tax Act so as to refuse registration of the firm, in doing so, the Tribunal would naturally have to examine not only the question whether the assessee had or had not shown reasonable cause for non-compliance with the notice u/s 22(4) but would also have to examine whether the Income Tax Officer had exercised his discretion properly or improperly, in view of this circumstance, we do not think that any opinion should be expressed by this Court on the second question at this stage.

4. Let the reference be returned to the Income Tax Appellate Tribunal with these observations. The assessee will be entitled to the costs of this reference from the Department which we fix at Rs. 200/-.

