
(2004) 08 AHC CK 0182
In the Allahabad High Court
Case No : IT Ref. No. 216 of 1979

Additional Commissioner of Income Tax	APPELLANT
Vs	
Hindustan Traders	RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 186(2)

Citation : (2004) 191 CTR 405 : (2005) 272 ITR 413 : (2005) 142 TAXMAN 231

Hon'ble Judges : R.K. Agrawal, J; K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

1. The Tribunal, Allahabad, has referred the following question of law u/s 256(2) of the IT Act, 1961 (hereinafter referred to as "the Act"), for opinion to this Court :

"1. Whether, on the facts and in the circumstances of the case, was the Tribunal justified in setting aside the order of the AAC and remanding the case after giving the requisite notice and instead annulling the order of the ITO ?"

2. Briefly stated, the facts giving rise to the present reference are as follows :

The respondent-assessee is a firm and was assessed as a registered firm upto the asst. yr. 1964-65. For the asst. yr. 1965-66 a declaration in Form No. 12, as required by Section 184(7) of the Act, was filed. In the course of the assessment proceedings, the assessee, however, did not comply with the notice u/s 143(2) of the Act, therefore, the ITO while making assessment u/s 144 of the Act, held that, since the assessee failed to produce the account books, it is not known whether the books of account have been maintained and, if maintained, the profits have been divided according to the profit-sharing ratio prescribed in the partnership deed and as such refused to continue the registration of the firm for the asst. yr. 1965-66. Aggrieved, the respondent-assessee preferred an appeal. The AAC held that refusal to continue the registration of the firm without giving

the prescribed notice of 14 days was not justified. He, therefore, directed the ITO to give to the assessee the notice of 14 days and then decide as to whether the respondent-assessee was entitled to registration for the year under appeal. Still aggrieved, the respondent-assessee went up in appeal before the Tribunal. The Tribunal held that if the ITO wanted to refuse to continue the registration of the firm, he should have given the prescribed 14 days' notice as provided u/s 186(2) and since this was not done, refusal to continue the registration of the firm could not be upheld. Hence, the Tribunal directed the ITO to allow the assessee's claim for continuation of the registration.

3. We have heard Sri A.N. Mahajan, the learned counsel for the Revenue. Nobody has put in appearance on behalf of the respondent-assessee.

4. The learned counsel for the Revenue submitted that, in the present case, it is not in dispute that the assessment was made u/s 144 of the Act and, therefore, in terms of Section 186(2), the registration has rightly been cancelled. He further submitted that even if the required notice of 14 days was not given, the Tribunal instead of granting registration, ought to have remanded the matter back to the assessing authority for complying with the requirement of notice.

5. Section 186(2) of the Act, as it stood during the relevant period, is reproduced below :

"(2) If, where a firm has been registered or is deemed to have been registered or its registration has effect under Sub-section (7) of Section 184 for any assessment year, there is, on the part of the firm, any such failure in respect of the assessment year as is mentioned in Section 144, the AO may cancel the registration of the firm for the assessment year, after giving the firm not less than fourteen days' notice intimating his intention to cancel its registration and after giving it a reasonable opportunity of being heard."

6. From a reading of the aforesaid provision, it is seen that before cancelling the registration of a firm, the ITO has to give a notice of not less than 14 days intimating the intention to cancel its registration and has also to afford a reasonable opportunity of being heard. The ITO does not assume the jurisdiction for cancelling the registration of a firm upon issue of a notice. The requirement of giving 14 days' notice and affording a reasonable opportunity of being heard, is only to inform the assessee regarding the proposed cancellation of the registration. Non-giving of the requisite notice might affect the legality of the order but did not affect the jurisdiction of the ITO. Thus, the order passed by the ITO cannot be said to be void ab initio. Absence of notice or reasonable opportunity of being heard does not mean that the proceedings are to be annulled and the respondent-assessee is entitled for continuation of registration. At best, the proceedings could have started afresh.

7. In the present case, there is no dispute that no notice was given as required under Sub-section (2). However, the Tribunal instead of annulling the proceedings, ought to have directed the ITO to give a notice of 14 days and pass

appropriate orders thereafter which had rightly been done by the AAC while deciding the appeal.

8. In view of the foregoing discussion, we are of the considered opinion that the Tribunal has committed an error in annulling the order passed by the ITO and directing for continuation of the registration. Proper course would have been to uphold the order of the AAC who had directed the ITO to give the assessee notice and proceed in accordance with law.

9. In this view of the matter, we answer the question in the negative, i.e., in favour of the Revenue and against the respondent-assessee. Since nobody has appeared on behalf of the respondent-assessee, there shall be no order as to costs.