(1999) 09 KAR CK 0011

In the Karnataka High Court

Case No : Income Tax R.C. No''s. 28 and 29 of 1997

Babu and Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:
Income Tax Act, 1961 — Section 271 (1) (a)

Citation : (2000) 243 ITR 29

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : K.R. Prasad, for the Appellant; E.R. Indrakumar, for the Respondent

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following questions of law arising out of its order dated February 20, 1995, in respect of the assessment years 1981-82 and 1983-84 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the penalty was leviable u/s 271(1)(a) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal had any material to hold that there was no reasonable cause for the delay in the filing of the return of income ?

3. Whether, on the facts, and in the circumstances of the case, the finding of the Tribunal that there was no reasonable cause for the delay in the filing of the return of income was reasonable ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the delay in the filing of return for earlier year cannot constitute a reasonable cause for the delay in filing of the return for the current year ?"

2. The facts of the case are that in respect of the assessment year 1981-82 the return was due to be filed on June 30, 1981. Form No. 6 was filed seeking

extension of time up to September 30, 1981. The return in fact was filed on March 31, 1983, i.e., after a delay of 18 months from the time allowed. It was stated by the assessee that the managing partner was ill and ultimately died on February 18, 1983. The accounts of the firm could not be finalised by the surviving partners and there is no wilful default. The Income Tax Officer found that the reasons were not convincing and the assessee was allowed time to file the return up to September 30, 1981. Though the request was made to extend the time for furnishing the return up to December 31, 1981. No application for seeking further extension of time was made nor any reason was given as to why the return could not be filed by September 30, 1981, and there also it was contended that the managing partner was seriously ill and ultimately expired and the accounts could not be finalised. In respect of the assessment year 1983-84 also, the return was filed on August 30, 1985, whereas the managing partner died on February 18, 1983. A contention was also raised that since the accounts of the previous years were not complete, therefore, the accounts for the subsequent year could not be completed and the delay in filing the return should not result in levying of penalty.

3. The appellate authority found that it is a case of negligence and carelessness and there is no sufficient cause for filing the return late. It was also found that the income of the firm has increased in the year 1983-84 in comparison to the income of the earlier years and, therefore, there was no justification in not taking proper care to file the return. Ultimately, the Tribunal also rejected the appeal observing that if the assessee was serious about tax matters he could have got the accounts finalised and filed the returns in time and still if there was any need for seeking any extension he could have filed Form No. 6 before the time granted at the first instance was over. The contention that the accounts of the previous year were not complete itself could be a ground for non-levy of penalty was rejected in view of the judgment of the Gujarat High Court in the case of Commissioner of Income Tax Vs. J.L. Trivedi and Sons, .

4. Arguments of both learned counsel for the parties heard.

5. A statutory duty has been cast upon the assessee to file the return within the time in accordance with law as it was existing at the relevant time. If any application is made to the assessing authority to extend the time, the assessing authority could have extended the time taking into consideration the reasons given. It is clear from the facts which have come on record that in the year 1981-82 the application for extension of time was moved till December 31, 1981, though the time was granted up to September 30, 1981. If during that period for any reason the return was not filed, the proper course for the assessee was to file an application for further extension of time giving the reason as to why the return could not be filed up to September 30, 1981, and within which time he could furnish the return for which the extension is sought. It was not done. The reason which was given before the Income Tax Officer, that it was because of illness, of the managing partner that the return could not be filed and there was

a change of accountant also. It was found as a fact that the business of the assessee was being carried on and was not affected because of the illness of the managing partner. On the contrary, the income in the year 1983-84 has been shown to be more in comparison to the preceding year. There could not have been any reason of illness of the managing partner for the year 1983-84 because he expired on February 18, 1983, whereas the return was to be filed on June 30, 1983. At that time no application for extension was moved giving reason that because of the death of the managing partner, the accounts could not be completed. The contention which is now raised is that if the accounts of one year are not complete then for the delay in furnishing the return for the subsequent year the penalty cannot be levied. The Tribunal has proceeded on the basis that for the year 1981-82 also, the assessee should have moved for extension of time, before the expiry of the time already granted, i.e., September 30, 1981. Penalty for late submission of return can be imposed if the assessee fails to show a reasonable cause. Even illness can be a reasonable cause, but it has to be established that it was because of the illness the return could not be filed in time. For the assessment year 1983-84, the return was required to be filed before June 30, 1983. For that year also it was stated that the managing partner was not well and it was stated that Form No. 6 was filed.

6. In a case under the Income Tax Act when this court is answering the question referred, it has to go only on the basis of the finding which has been recorded by the Tribunal. The finding which has been recorded is that for the year 1981-82, the extension was given on an application, for filing the return till September 30, 1981, while in the year 1983-84 no such application was filed. Even if it was a case that the managing partner was ill and because of his illness the return could not be filed, the assessee could have moved for extension of time giving the reasons in Form No. 6 and also the evidence in support of his contention of illness. Frequent change of accountants cannot be a ground for non-completion of the accounts. It was for the assessee to have completed the accounts in time. The authorities have recorded a finding of fact that there is no reasonable cause for non-furnishing of the return in time. The finding of fact recorded does not require any interference by this court.

7. Reference is accordingly answered in favour of the Revenue and against the assessee and it is held that the reasonable cause was to be established by the assessee and there was no such material which was submitted by the assessee and not considered by the Tribunal. The finding that there was no reasonable cause for the delay in filing the return was justified in the facts and in the circumstances of the case.