
(1984) 10 KAR CK 0003
In the Karnataka High Court
Case No : Income Tax R.C. No. 165 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Angadi Bros.

RESPONDENT

Date of Decision : 26-10-1984

Acts Referred:

Income Tax Act, 1961 — Section 184 (7), 185, 2 (31), 246, 246 (1) (c)

Citation : (1985) 48 CTR 283 : (1985) ILR (Kar) 345 : (1986) 157 ITR 426

Hon'ble Judges : S.A. Hakeem, J; Mohammad Sharif, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; B.V. Katageri, for the Respondent

Judgement

Jagannatha Shetty, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961 (the "Act"). The following question, at the instance of the Revenue, has been referred by the Income Tax Appellate Tribunal, Bangalore Bench :

"Whether in law the Appellate Tribunal is justified in holding that an appeal lies from the order of the Income Tax Officer rejecting the assessee's declaration in Form No. 12 for continuation of registration ?"

2. The assessee is a firm in respect of which the Income Tax Officer had granted registration for the years earlier to 1975-76.

3. For the assessment year 1975-76, the assessee filed the return of income along with a declaration in Form No. 12 on August 30, 1975. The return was due on June 30, 1975. There was thus a delay of two months in filing the return and Form No. 12. The Income Tax Officer asked the assessee to give reasons for the belated filing of Form No. 12. The assessee did not reply to the notice. On March 29, 1976, the Income Tax Officer assessed the firm as an unregistered firm by refusing renewal of registration. The order was made in the following terms :

"Order u/s 185 :

The assessee has filed Form No. 12 along with the return of income on August

30, 1975. There is a delay in filing the return as well as Form No. 12 by 2 months. A letter to the assessee calling for the assessee's explanation for late filing of Form No. 12 was issued. There is no response to the said letter till date. Therefore, renewal of registration is refused and the status of the assessee is taken as that of unregistered firm.

(Sd.) A. V. Sreenivas Iyengar, VIth Income Tax Officer, Hubli."

4. Against the said order, the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the appeal was not maintainable u/s 246, since the order of the Income Tax Officer although purports to have been passed u/s 185 really falls u/s 184(7) of the Act, inasmuch as the Income Tax Officer had refused to condone the delay in filing Form No. 12 for continuation of registration. So stating, the Appellate Assistant Commissioner dismissed the appeal as incompetent.

5. In the second appeal preferred by the assessee, the Appellate Tribunal, following the decision of the Gujarat High Court in Commissioner of Income Tax, Gujrat Vs. Dineschandra Industries, held that the appeal before the Appellate Assistant Commissioner was maintainable and it directed the Appellate Assistant Commissioner to rehear the appeal on merits.

6. As a preliminary to the consideration of the question raised, it would be necessary to advert to the relevant provisions in the Act.

7. Section 184(1) provides for filing an application for registration of a firm. Section 184(4) prescribes the time-limit within which the application for registration must be made. The proviso thereunder confers power on the Income Tax Officer to accept the belated application on sufficient cause being shown by the assessee. Section 185(1) confers power on the Income Tax Officer to grant or refuse registration depending upon his satisfaction as to the existence of a genuine firm as disclosed in the instrument of partnership. If the Income Tax Officer is satisfied about the existence of a genuine firm, he must grant registration. Section 184(7) provides that the registration granted for any assessment year shall have effect for every subsequent assessment year provided there has been no change in the constitution of the firm and the assessee files the necessary declaration in the prescribed form (Form No. 12) within the stipulated period. Proviso to Section 184(7) confers power on the Income Tax Officer to entertain a belated application if there is sufficient cause shown by the assessee.

8. Section 185(2) provides that if the application for registration is not in order, the Income Tax Officer must grant an opportunity to the firm to rectify the defect and if the defect is not rectified within the period stipulated, the Income Tax Officer must reject the application. Similarly, section 185(3) confers power on the Income Tax Officer to deal with defective declarations. It states : if the declaration filed u/s 184(7) is not in order, the Income Tax Officer must give an opportunity to the firm to rectify the defect and if the defect is not rectified

within the stipulated period, the Income Tax Officer shall, by an order, declare that the registration granted shall not have effect for the relevant assessment year.

9. It will be useful in this context to read the relevant provisions as to registration of firms provided under the Indian Income Tax Act of 1922.

10. Section 26A(I) provided for filing of application for registration and section 26A(2) provided that the application must be in the prescribed form, filed within the prescribed time and verified in the prescribed manner. Rule 2 framed thereunder empowered the Income Tax Officer to condone the delay in filing the application. Rule 4 enabled the Income Tax Officer to grant or refuse registration depending on his satisfaction about the existence or otherwise of the firm constituted as shown in the instrument of partnership. Rule 5 provided that the certificate of registration granted under rule 4 shall have effect only for the concerned assessment year. Rule 6 enabled the filing of application for renewal of registration for subsequent assessment year and rule 6A provided power to grant or refuse renewal of registration.

11. The material changes introduced in the 1961 Act are :

(i) The procedure under the 1922 Act to make a fresh application every year has been done away with except in cases where there is a change in the constitution of the firm. The registration once granted becomes operative for subsequent assessment years provided the assessee satisfies the two requirements prescribed under the proviso to section 184(7). If the application for registration or the declaration u/s 184(7) is found to be defective, the Income Tax Officer must give an opportunity to the assessee to rectify the defect within one month from the date of intimation.

12. The question now to be considered is whether the order of the Income Tax Officer in refusing to condone the delay in filing the declaration in Form No. 12 u/s 184(7) and consequently assessing the firm as unregistered is appealable u/s 246(1)(c) or u/s 246(1)(j).

13. Since the question raised is of intricate nature, we requested Mr. K. R. Prasad to assist the court in the matter. The learned counsel readily agreed and put the case most attractively on the scope of section 246(1)(c) of the Act and we record our appreciation.

14. Before determining the question, it will be convenient to dispose of one of the contentions urged by Sri Katageri, learned counsel for the assessee.

15. The counsel urged that the Income Tax Officer expressly made the order u/s 185 and not u/s 184(7) and, therefore, it is not open to the court to hold that the Income Tax Officer must be deemed to have made the order u/s 184(7). It is true that the Income Tax Officer has referred to section 185 in his order, but mere mentioning a provision of law will not either validate or invalidate the order made, if the Income Tax Officer is held to have no such power under that

provision. We must, therefore, examine the substance of the order and not the form of it.

16. Mr. Prasad and Mr. Katageri urged that since the assessee denies its liability to be assessed under the Act and also objects to the status of unregistered firm under which it is assessed, it has a right of appeal against the order made by the Income Tax Officer u/s 246(1)(c). Section 246(1)(c) provides :

"246. (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Income Tax Officer may appeal to the Appellate Assistant Commissioner against such order-.....

(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under subsection (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;"

17. The relevant portion of the clause for our purpose reads :

"Where the assessee denies his liability to be assessed under this Act or..... where the assessee objects..... to the status under which he is assessed."

18. In either case, there is a right of appeal to the assessee against the order of the Income Tax Officer.

19. We will first examine the scope and meaning of the expression "where the assessee objects to the status under which he is assessed". The assessee in this case claim to be assessed as a registered firm, but the Income Tax Officer has assessed it as an unregistered firm. Can it be said that the assessee objects to the status under which it is assessed ? If the answer to this question is in the affirmative, then it must be held that the assessee in this case has a right of appeal to the Appellate Assistant Commissioner u/s 246(1)(c).

20. Mr. Srinivasan, learned counsel for the Revenue, urged that the firm is a unit of assessment and the "status" referred to u/s 246(1)(c) can have reference only to "person" mentioned in section 2(31) of the Act, where it is defined to include : (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, etc. No doubt, section 2(31) defining "person" does not refer to "registered firm" or "unregistered firm". It just refers to a "firm". But the counsel for the assessee relied upon Explanation (c) to section 246 and urged that for the purpose of section 246(1)(c), the "status" includes where an assessee is a firm, its classification as a registered firm or an unregistered firm. The said Explanation reads :

" (c) "status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on."

21. This Explanation does not specifically refer to the status of the assessee to

mean a registered firm or an unregistered firm. The Legislature after referring to the two categories of "status" like "individual" and "Hindu undivided family" has used the words "and so on". We do not know whether it is for economy of words or for structural beauty. In either case, however, our task is not minimised. It is necessary to find out the other categories of "status" sought to be included within those improvised words.

22. What are those other categories ? According to Mr. Srinivasan, it has reference only to the categories of "person" as defined in section 2(31) of the Act. But Mr. Prasad and Mr. Katageri urged that those words were intended to cover the "status" enumerated under Explanation (2) to section 143(3) of the Act. It seems to us that the contention urged by Mr. Prasad and Mr. Katageri appears to be correct. Section 246(1)(c) refers to an order of assessment u/s 143(3), where the assessee objects, among other things, to the status under which he is assessed. Explanation (2) to section 143(3) also explains the "status". It reads : "Explanation. - For the purposes of this section,.....

(2) "status" in relation to an assessee, means the classification of the assessee as an individual, a Hindu undivided family, or any other category of persons referred to in clause (31) of section 2, and where the assessee is a firm, its classification as a registered firm or an unregistered firm."

23. The "status" explained herein thus expressly includes the classification of the assessee as a registered firm or an unregistered firm. Since section 246(1)(c) refers to section 143(3), the above Explanation, in our opinion, is the real focus to consider the scope of the words "and so on" used in Explanation (c) to section 246.

24. Mr. Srinivasan, however, urged that Explanation (2) to section 143 is applicable only to sub-section (3) of section 143 and it cannot be extended to the entire section 143, since that Explanation was meant only to explain the scope of the said sub-section.

25. This contention is plainly contrary to Explanation (2) to section 143 itself. The said Explanation begins with the word : "For the purposes of this section" which means to the entire section 143. Section 143 provides for cancelling the assessment u/s 143(1) and for making a fresh assessment. The order of assessment so made u/s 143(3) is appealable u/s 246(1)(c). Since Explanation (2) to section 143 specifically states that "status" of the assessee which is a firm includes its classification as registered firm or unregistered firm, the "status" of the assessee referred to u/s 246(1)(c) must be consistent with the same meaning. the said two Explanations are indeed supplementary to each other.

26. Our view in this regard finds support from the decision of the Allahabad High Court in Income Tax Officer Vs. Vinod Krishna Som Prakash, ,

27. We are, therefore, of the opinion that the order made by the Income Tax Officer assessing the firm as an unregistered firm after refusing to condone the

delay in filing the declaration in Form No. 12 is appealable u/s 246(1)(c).

28. The next question for a decision is when the assessee contends that it should not be assessed as unregistered firm and pleads that it should be assessed as a registered firm by filing declaration in Form No. 12 u/s 184(7), whether it would be said that the assessee "denies its liability to be assessed under the Act" as provided u/s 246(1)(c).

29. The answer to this question presents little problem and is beyond the pale of controversy in view of the decision of the Supreme Court in *Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate*, . There, the assessee consisted of several persons combined together for the purpose of purchasing coal in order to supply the same to customers for domestic purposes and other small scale industries. For the assessment year 1948-49, the Income Tax Officer levied tax upon the total income in the hands of the said association of persons. The assessee contended that it should not be assessed to tax as an association of persons, but the proportion of the income in the hands of each of the members of the association might be assessed to tax instead. As the Income Tax Officer did not comply with this request, the assessee preferred an appeal to the Appellate Assistant Commissioner, but it was dismissed. The question arose whether an appeal was maintainable at the instance of the association of persons when they were assessed as one unit on the ground that the officer should have assessed the individual members of the said association.

30. Section 30 of the Indian Income Tax Act, 1922, contained a similar expression such as "denying his liability to be assessed under the Act" and the section also provided that such an assessee may appeal to the Appellate Assistant Commissioner against the order of assessment. The Supreme Court, while examining the scope of the expression "denial of liability", observed (at p. 229) :

"Under section 30, an assessee objecting to the amount of income assessed u/s 23 or the amount of tax determined under the said section or denying his liability to be assessed under the Act can prefer an appeal against the order of the Income Tax Officer to the Appellate Assistant Commissioner. It is said that an order made by the Income Tax Officer rejecting the plea of an association of persons that the members thereof shall be assessed individually does not fall under one or other of the three heads mentioned above. What is the substance of the objection of the assessee ? The assessee denies his liability to be assessed under the Act in the circumstances of the case and pleads that the members of the association shall be assessed only individually. The expression "denial of liability" is comprehensive enough to take in not only the total denial of liability but also the liability to tax under particular circumstances. In either case, the denial is a denial of liability to be assessed under the provision of the Act. In one case, the assessee says that he is not liable to be assessed to tax under the Act and in the other case, the assessee denies his liability to tax under provisions of the Act if the option given to the appropriate officer under the provisions of the

Act is judicially exercised. We, therefore, hold that such an assessee has a right of appeal u/s 30 of the Act against the order of the Income Tax Officer assessing the association of members instead of the members thereof individually."

31. It will be seen from the above observation that the expression "denial of liability" is comprehensive enough to take in not only the total denial of liability but also the liability to tax under particular circumstances. In either case, the denial is a denial of liability to be assessed under the provisions of the Act. On this view, the Supreme Court that the order of the Income Tax Officer assessing the association of members instead of the members thereof individually was appealable u/s 30 of the Indian Income Tax Act, 1922.

32. The assessee in this case denies its liability to be assessed as an unregistered firm and pleads that it should be assessed only as a registered firm. The expression "denial of liability", as per the said decision of the Supreme Court, is comprehensive enough to take in not only the total denial of liability to be assessed under the Act but also the liability to tax under particular circumstances. The total denial of liability to be assessed appears to mean that where the assessee contends that it is not at all liable to be assessed under the Act which in other words means that the assessee wants to get out of the clutches of the entire Act. Whereas, the denial of liability to tax under particular circumstances may mean, if we may say so, the assessee denies its liability to tax not wholly, but partially. We, therefore, hold that having regard to the contention of the assessee in this case, the assessee must be held to have a right to appeal against the order of the Income Tax Officer.

33. We cannot accept the contention of Mr. Srinivasan that the assessee claiming to be assessed as a registered firm, if assessed as an unregistered firm, cannot be said that it is denying its liability to be assessed under particular circumstances as laid down by the Supreme Court. This contention overlooks the essential difference between a registered firm and an unregistered firm for the purpose of taxation under the Act. An unregistered firm is a distinct assessable entity quite different from a registered firm for the purposes of the Act. The registration of a firm affects the assessment procedure. It makes a difference for the purpose of determination of the tax payable and the demand for the tax so found due.

34. Before 1956, i.e., prior to the amendments made by the Finance Act, 1956, the position under the 1922 Act in regard to firms was as follows :

35. Where the firm was unregistered, the tax payable by the firm itself was determined as in the case of any other distinct entity and the levy was made on the firm itself. On the other hand, where the firm was registered, the firm did not itself pay the tax and, therefore, the tax payable in respect of the firm's income was not determined; but each partner's share in the firm's income was added to his other income, the tax payable by each partner on the basis of his total income (including his share of the firm's income) was determined and the levy

was made on the partners individually.

36. But after 1956, Income Tax at special rates is now assessable on a registered firm, commonly known as the "registered firm's tax", while the partners of a registered firm are liable, as before 1956, to be taxed in their individual assessments in respect of their shares of the firm's income. So there is double taxation in the case of a registered firm and partial relief against such double taxation has been provided by section 67(1)(a).

37. But tax is not payable by a partner of an unregistered firm in respect of his share in the income of the firm on which tax is payable by the firm, although such share is to be included in his total income for the purpose of determining the rate applicable to his taxable income. When an unregistered firm is assessed as a unit, the rates of tax applicable may be higher than those which would be applicable to the total income of a partner, inclusive of his share of the firm's income, but a partner would not be entitled to any refund of the tax paid by the firm at the higher rates. The basis for this distinction has been explained in *The Law and Practice of Income Tax* by Kanga and Palkhivala (Vol. I at p. 1004) as follows :

"The reason is that an unregistered firm is a distinct assessable entity for the purposes of the Act and pays the tax in discharge of its own liability and not on behalf of its partners."

38. We share this view and reject the contention of Mr. Srinivasan. We hold that the assessee in this case having regard to the contention that it should not be assessed as an unregistered firm "denies its liability to tax" and so the assessment order is appealable u/s 246(1)(c).

39. In the conclusion that we have reached, it may not be necessary consider whether the assessment order amounts to an order falling u/s 185(3) and is appealable u/s 246(1)(j) of the Act, but Since the arguments were also advanced on this question, out of deference to the counsel, we briefly express our view.

40. Section 246(1)(j) expressly provides for an appeal against an order u/s 185(1), (2), (3) and (5). It makes no reference to an order u/s 184.

41. The proviso to section 184(4) and the proviso to section 184(7) confer power on the Income Tax Officer to entertain a belated application or declaration on being satisfied that the firm was prevented by sufficient cause from making the application or from furnishing the declaration within the prescribed time. The said sub-sections also impliedly confer power on the Income Tax Officer to reject a belated application or declaration if no sufficient cause was shown by the firm.

42. Section 185(2) and (3) provides for intimating the firm of the defect in the application or in the declaration, with an opportunity to rectify the defect within one month. If the defect pointed out is not rectified within that period, the Income Tax Officer shall, by order in writing, reject the application or the declaration, as the case may be. One view is that the defects contemplated u/s

185(2) and (3) relate to formal defects noticed in the application or declaration filed in time and do not relate to the application or declaration filed beyond the prescribed time and since the latter type of cases are specifically covered by section 184(4) and (7), the order made thereunder is not appealable u/s 246(1)(j) The Madras High Court in A.S.S.S.S. Chandrasekaran and Brothers Vs. The Commissioner of Income Tax, Madras, , the Orissa High Court in New Orissa Traders Vs. Commissioner of Income Tax, (Commissioner of Income Tax Vs. Pohop Singh Rice Mill, and the Allahabad High Court in Ashwani Kumar Maksudan Lal and Others Vs. Additional Commissioner of Income Tax and Others, have taken this view.

43. With great respect, we are unable to agree with the view taken in the above decisions. In the matter of interpretation of any statute, we must avoid a blinkered way. That is to go back to bad old traditional literal minded approach. It is now a well settled principle that a statutory provision conferring a right of appeal, in case of doubt, should be liberally construed. As observed by the Supreme Court in Mela Ram and Sons Vs. The Commissioner of Income Tax Punjab, , the courts should be slow to adopt a construction which deprives the parties of the right of appeal. We should reject only such construction which gives rise to unjust results which the Legislature never intended.

44. If we peruse the relevant provisions in the Act for granting registration or continuing the effect of registration to firms, it will be clear that section 184 does not expressly provide power for making any such order. It contains procedure for filing an application or a declaration. It enables the Income Tax Officer, that too impliedly, to reject a belated application or the declaration by refusing to condone the delay if there was no sufficient cause shown by the firm. That is all.

45. Section 184(7) states that if a firm is registered for any assessment year, the registration shall have effect for every subsequent assessment year provided there is no change in the constitution of the firm or the shares of the partners. The legal effect of this provision could be nullified only by a specific order made by the Income Tax Officer and not by implication. If, therefore, the Income Tax Officer does not condone the delay in making the declaration u/s 184(7), it would be necessary for him to make a further order declaring that the registration granted to the firm in the previous assessment year will have no effect for the relevant assessment year. Such an order could be made only u/s 185(3). Indeed, the Income Tax Officer, in the instant case, did make such an order by stating that the renewal of registration was refused. That order of the Income Tax Officer is, therefore, clearly appealable u/s 246(1)(j) of the Act.

46. This is also the line of reasoning adopted by the Andhra Pradesh High Court in Addl. Additional Commissioner of Income Tax Vs. Chekka Ayyanna and Others,

47. The Gujarat High Court in Commissioner of Income Tax, Gujrat Vs. Dineschandra Industries, , has also held that an order refusing to condone the delay u/s 184(4) is appealable.

48. The Punjab and Haryana High Court in Commissioner of Income Tax Vs. Beri Chemical Industries, has also held that an order dismissing the assessee's belated application for registration under the proviso to section 184(4) tantamounts to an order u/s 185(1)(b) and thus an appeal is competent against such an order u/s 246(1)(j) of the Act.

49. Similar view has been taken by the Madhya Pradesh High Court in Durgaprasad Rajaram Adatiya Vs. Commissioner of Income Tax, and the Allahabad High Court in ITO v. Vinod Krishna Som Prakash [1977] 117 ITR 594.

50. In the result, we answer the question in the affirmative and against the Revenue.