
(1988) 09 GAU CK 0014

In the Gauhati High Court

Case No : Income-tax Reference No. 1 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Assam Cold Storage Co.

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Income Tax Act, 1961 — Section 184, 185, 185(1), 185(2), 185(3)

Citation : (1989) 78 CTR 155 : (1989) 178 ITR 396

Hon'ble Judges : A. Raghuvir, C.J.; S.P. Rajkhowa, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; D.N. Choudhury and K.H. Choudhury, for the Respondent

Judgement

A. Raghuvir, C.J.—The following question has been referred to this court u/s 256 of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the order of the Income Tax Officer rejecting the declaration filed beyond the time prescribed u/s 184(7) is an order made in exercise of the powers conferred by Section 185(3) of the Act ?".

2. The Assam Cold Storage Co. at Tinsukia is a partnership firm. As a firm, under the Income Tax Act, 1961, annually the firm filed a declaration in Form No. 12. Relevant to the question in reference, the declaration was to be filed before October 16, 1971. The firm, instead filed it on November 15, 1971. On February 6, 1974, the firm explained that as one of the partners was bedridden due to cardiac trouble in the months of August to November, 1971, the delay occurred. The Income Tax Officer did not believe the explanation and stated that the declaration was signed on November 3, 1971, and was filed on November 15. The reason shown for the delay was not "genuine" and, therefore, rejected the declaration. The Appellate Assistant Commissioner, on appeal, condoned the delay. On further appeal by the Revenue, the Appellate Tribunal confirmed the order in the first appeal. Before the first appellate authority and before the

Tribunal, the Revenue contended unsuccessfully that the order of the Income Tax Officer was not an appealable order. The question in that context is now referred to this court at the instance of the Revenue.

3. In our jurisprudence, it is said that an appeal does not lie in the nature of things. The appeals are to be provided in statutes. The answer to the instant question in that background of jurisprudence has to be discovered in the Income Tax Act, 1961.

4. In the repealed Act of 1922, a firm was required to file an application for registration along with the particulars. When the application is made beyond time, the rule required that the Income Tax Officer was to be satisfied as to the sufficiency of the cause for not making the application in time. If the income tax Officer was not satisfied, he could refuse registration to the firm. Such an order was appealable u/s 30 of the Act.

5. The Gujarat High Court in Commissioner of Income Tax, Gujrat Vs. Dineschandra Industries, when a similar question as in the instant case arose, held that when registration is refused, such an order is appealable under the Income Tax Act, 1961. That court also considered the repealed Act of 1922, and observed that Parliament did not depart from the scheme of the 1922 Act and u/s 185(1)(b), such an order is an appealable order.

6. The Allahabad High Court in Ashwani Kumar Maksudan Lal and Others Vs. Additional Commissioner of Income Tax and Others, considered a like question in a writ petition. In that case, the declaration was signed by a person other than the appropriate person, and, therefore, the registration was refused. That High Court held that such an order was not appealable.

7. In Sandersons and Morgans Vs. Income Tax Officer, "A" Ward and Others, a single judge of the Calcutta High Court in a writ petition considered the scope of Sections 184 and 187 and observed that no separate order u/s 184(7) is required to be passed. But a separate order by the Income Tax Officer is required to record the fact of rejection of registration so that when the assessee prefers an appeal against the assessment order, the assessee can assail the rejection order. The question was left at that stage.

8. In A.S.S.S.S. Chandrasekaran and Brothers Vs. The Commissioner of Income Tax, Madras, the Madras High Court held that delay in filing the declaration should be explained. If the Income Tax Officer is satisfied, he can condone the delay. If the delay was not condoned, such an order is not appealable.

9. The Delhi High Court in Sant Lal Kashmiri Lal, Delhi Vs. The Commissioner of Income Tax, Delhi, held that in a case where a firm was registered in the preceding year, such registration also enures to the benefit of the assessee in the succeeding year unless, by an order, registration of the firm is cancelled. That is how the issue was dealt with in that case.

10. In the Income Tax Act, 1961, appeals are provided u/s 246. An order under

Clause (b) of Sub-section (1) or under Sub-section (2) or Sub-section (3) or Sub-section (5) of Section 185 is appealable is recited in Clause (j) of that section.

11. Sub-section (1) of Section 185 reads as under :

"185. Procedure on receipt of application.-- (1) On receipt of an application for the registration of a firm, the Assessing Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and

(a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year ;

(b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm."

12. Sub-section (3) of Section 185 reads as under :

"Where the Income Tax Officer considers that the declaration furnished by a firm in pursuance of Sub-section (7) of Section 184 is not in order, he shall intimate the defect to the firm and give it an opportunity to rectify the defect in the declaration within a period of one month from the date of such intimation ; and if the defect is not rectified within that period, the Assessing Officer shall, by order in writing, declare that the registration granted to the firm shall not have effect for the relevant assessment year."

13. The above provisions show that the Income Tax Officer is to be satisfied as to the genuineness of the firm. If, in the previous year, the firm was found registered, the Income Tax Officer shall register the firm for the following assessment year. If he is not satisfied as to the genuineness, he can cancel the registration of the firm though the firm may have been registered in the previous year.

14. Now, in the instant case, the firm was registered in the preceding year. The declaration in Form No. 12 was not made within time for the following assessment year. In that situation, Sub-sections (4) and (7) of Section 184 are relevant.

15. Sub-section (4) reads as under :

"(4) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought."

16. Sub-section (7) reads as under :

"Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year :

Provided that-

(i) there is no change in the constitution of the firm or the shares of the partners

as evidenced by the instrument of partnership on the basis of which the registration was granted ; and

(ii) the firm furnishes, before the expiry of the time allowed under Sub-section (1) or Sub-section (2) of Section 139 (whether fixed originally or on extension) for furnishing the return of income for such subsequent assessment year, a declaration to that effect, in the prescribed form and verified in the prescribed manner, so, however, that where the Assessing Officer is satisfied that the firm was prevented by sufficient cause from furnishing the declaration within the time so allowed, he may allow the firm to furnish the declaration at any time before the assessment is made."

17. If there is no change in the constitution of the firm, what is set out in Clause (i) follows. In Clause (ii) before the expiry of the time allowed for furnishing the return of income for subsequent assessment year, a declaration to that effect, in the prescribed Form No. 12 has to be verified and filed. If the officer is satisfied that the firm was prevented by sufficient cause, and, therefore, did not file the declaration, the Income Tax Officer can condone the delay.

18. The condonation does not fall within the four corners of Sub-section (7). Sub-section (7) recites that the Income Tax Officer may "allow to submit a declaration before the assessment is made". In terms, it does not speak of rejection of declaration. May be the obverse of allowing the firm to file the declaration is to reject it and consequently in that contingency, registration of the firm stands cancelled. These are not stated in Sub-section (7) but follow as the effect of such an order. The effects are dealt with under Sub-section (3) of Section 185 of the Act. In such a situation, it is not improper to hold that the order is passed under Sub-section (3) of Section 185 where the words are "shall not have effect".

19. We answer the question in the affirmative, in favour of the assessee and against the Revenue. No costs.