(1987) 05 PAT CK 0021

In the Patna High Court

Case No : Taxation Case No. 31 of 1978

Commissioner of Income Tax APPELLANT

Vs

Associated Engineering Co. RESPONDENT

Date of Decision : 11-05-1987

Acts Referred:
Income Tax Act, 1961 — Section 184(7), 187(2), 246

Citation : (1987) 63 CTR 222 : (1988) 169 ITR 372 : (1987) 34 TAXMAN 337

Hon'ble Judges : Uday Sinha, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; None, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, The assessment year is 1973-74. The two questions referred to us for our opinion are as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the order passed by the Income Tax Officer u/s 184(7) of the Income Tax Act was appealabla before the Appellate Assistant Commissioner u/s 246 of the Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the Appellate Assistant Commissioner was right in giving a direction to the Income Tax Officer to consider the contention of the assessee and to pass a fresh order on the point of granting continuation of registration ? "

2. The answer to the first question is concluded by our decision in Commissioner of Income Tax Vs. Jugsalai Electric Supply Co., , where we held that the appeal by the assessee against the order rejecting the, registration of the firm would be appealable. That question is, therefore, answered in the affirmative, in favour of the assessee and against the Revenue.

3. In regard to the second question, the position on facts is that the assessee

was a partnership firm with two partners. One of them, namely, Satya Brata Bhattacharjee, retired from the partnership. A deed of dissolution was executed on January 9, 1973. Mr. Bhattacharjee received Rs. 40,000 ad hoc and gave up his interest in the firm. It will thus be seen that on and from January 9, 1973, there was no partnership. Only one of the partners remained. It is patent, therefore, that the constitution of the firm underwent a change on and from January 9, 1973. This clearly disentitles the firm to registration in terms of the proviso, Clause (i), to Section 184(7). Section 184(7) of the Act provides that the registration granted to any firm for any assessment year shall remain effective for every subsequent year unless there is a change in the constitution of the firm or the shares of the partners are altered. In the instant case, there was a change in the constitution of the firm. There could, therefore, be no question of grant of registration to the firm. In fact, there was no partnership firm between January 9, 1973, and March 31, 1973. It appears that this aspect of the matter was not considered either by the Appellate Assistant Commissioner or by the Appellate Tribunal. These facts emerged from the annexures to the statement of the case--more specifically from paragraph 4 of the order of the Appellate Assistant Commissioner, but since the question has been framed in very wide terms, the question embraces this aspect of the matter as well. In that view of the matter, we are of the view that the Appellate Tribunal was not correct in holding that the Appellate Assistant Commissioner was right in giving direction to the Income Tax Officer to consider the contention of the assessee and to pass a fresh order on the point of granting continuation of registration. The Appellate Assistant Commissioner held that there were sufficient grounds for delay in filing the application for registration. That finding was affirmed by the Appellate Tribunal as well. This court cannot look into the correctness of that finding. That is a finding of fact, but apart from the question of fact, there is a pure question of law also involved which question also is implicit in the second question referred to us. It is patent that the proviso, Clause (i), to Section 187 was a bar to continuation of registration. This is a case of continuation of registration and not of grant of registration. In that view of the matter, the answer to the second question obviously has to be that the Appellate Tribunal was not correct in holding that the Appellate Assistant Commissioner was right in giving direction to the Income Tax Officer to consider the contention of the assessee and to pass a fresh order in regard to the granting of continuation of registration.

4. For the reasons stated above, the first question is answered in favour of the assessee and against the Revenue. The second question, however, is answered in favour of the Revenue and against the assessee. There shall, however, be no order as to costs.

5. Let a copy of this judgment be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, in terms of Section 260 of the Income Tax Act, 1961.