(1985) 04 PAT CK 0036

In the Patna High Court

Case No : Taxation Case No. 101 of 1976

Commissioner of Income Tax APPELLANT

Vs

Bishwanath Khirwal RESPONDENT

Date of Decision : 22-04-1985

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 184(7)

Citation : (1986) 51 CTR 329 : (1986) 161 ITR 382

Hon'ble Judges : Uday Sinha, J;Nazir Ahmad, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; K.N. Jain and V.D. Narayan, for the Respondent

Judgement

Nazir Ahmad, J.—A statement of the case has been submitted by the Income Tax Appellate Tribunal, Patna Bench " A ", Patna, u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), referring the following question of law in view of the direction of this court for our opinion :

"Whether, on the facts and in the circumstances of the case, in the absence of any order of the Income Tax Officer extending the date of furnishing the return u/s 139(1) of the Income Tax Act, the Tribunal was justified in law in holding that there was continuation of registration of the assessee firm ?"

2. The facts of the case may be briefly stated. The assessee was being assessed as a registered firm for several years. In respect of the assessment year 1971-72, the assessee filed a declaration u/s 184(7) of the Act on February 11, 1972, for continuation of registration of the firm. According to the requirement of law, such a declaration had to be filed along with the return. The due date for filing the return was up to September 30, 1971. The assessee had applied for extension of time for filing of return up to March 31, 1972. The Income Tax Officer observed that the assessee had not applied for extension of the date for furnishing the declaration in Form No. 12. According to him, the condition laid down under proviso (ii) of Section 184(7) of the Act had not been fulfilled by the

assessee and, hence, the continuation of registration was refused for the assessment year. The order of the Income Tax Officer has been annexed and marked as annexure-A, forming part of the statement of the case.

3. When the matter came before the Appellate Assistant Commissioner, he found that the assessee had applied for extension of time for filing the return by registered post on September 8, 1971. Another application was sent on December 3, 1971. The return was filed on February 11, 1972, and in this return it was stated that Form No. 12 claiming continuation of registration was attached. It was contended before the Appellate Assistant Commissioner that the time granted for filing the return has also to be taken into consideration for the purpose of filing of the form for continuation of registration. In view of the proviso to Section 184(7) of the Act, as amended with effect from April 1, 1971, the Appellate Assistant Commissioner held that the declaration filed in Form No. 12 along with the return had to be treated as within time. The Appellate Assistant Commissioner, therefore, granted continuation of registration of the firm. The order of the Appellate Assistant Commissioner has been annexed and marked as annexure-B, forming part of the statement of the case.

4. The Department appealed before the Appellate Tribunal and it was contended on behalf of the Department that the assessee had not filed any application in Form No. 6 for extension of time for filing the return. On behalf of the assessee it was contended that the assessee had properly applied for extension of time for filing the return and the assessee held a receipt for having sent the application by registered post. The Appellate Tribunal was of the view that the Appellate Assistant Commissioner was satisfied after looking into the evidence that the assessee had applied for extension of time for filing the return and so the Appellate Tribunal held that the amended provision of Section 184(7) of the Act applied and they agreed with the finding of the Appellate Assistant Commissioner that the continuation of registration was to be allowed to the assessee. The order of the Appellate Tribunal has been annexed and marked as annexure-C, forming part of the assessment of the case.

5. The Income Tax Officer has not mentioned about the application in Form No. 6 of the assessee. The Income Tax Officer only pointed out that the declaration for continuation of registration u/s 184(7) of the Act was filed on February 11, 1972, in Form No. 12 for continuation of the registration stating that there was no change in the constitution of the firm or the shares of the partners in the previous year relevant to the assessment year 1971-72. The Income Tax Officer took the view that the declaration was to be furnished at any time before the due date for furnishing the return, which was September 30, 1971, in the assessee''s case. The Income Tax Officer held that Form No. 12 was filed on February 11, 1972. He also held that the assessee did not apply for extension of the time for furnishing such declaration and so the assessee had not fulfilled the condition laid down under proviso (ii) of Section 184(7) of the Act and so he assessed the assessee as an unregistered firm.

6. The Appellate Assistant Commissioner has clearly pointed out that the due date for submission of the return was September 30, 1971, and that the assessee applied for extension of time for filing the return till March 31, 1972, in Form No. 6 and that it was sent by registered post from Chaibasa, vide Receipt No. 579 dated September 8, 1971. It was also submitted before the Appellate Assistant Commissioner that another application was sent on December 3, 1971, under certificate of posting and the return was filed on February 11, 1972, along with Form No. 12 for continuation of registration. The Appellate Assistant Commissioner held that the time granted for submission of return u/s 139(1) or 139(2) of the Act will also be granted for purposes of declaration of continuation of the registration u/s 184(7) of the Act. The Appellate Assistant Commissioner held that there was no dispute that Form No. 12 was filed on February 11, 1972, along with the return of income. He, therefore, held that the time was extended for submission of the return by virtue of the petition in Form No. 6 and so the declaration in Form No. 12 submitted along with the return was within time. The Appellate Assistant Commissioner, therefore, held that continuance of registration should be granted to the assessee-firm. The Appellate Tribunal agreed with the findings of the Appellate Assistant Commissioner.

7. Of course, in the present case, there is no material to show that the Income Tax Officer allowed the application in Form No. 6 which was sent by registered post, vide Receipt No. 579 dated September 8, 1971. Mr. B. P. Rajgarhia, for the Revenue, has submitted that there is nothing on the record to show that Form No. 6 was sent to the Income Tax Officer. It was the duty of the Department to show as to what the assessee sent by postal Receipt No. 579 dated September 8, 1971. The Department could have asserted that Form No. 6 was not sent by this receipt but some other document was sent and then the Department should have been satisfied as to what document was sent under that receipt. Under such circumstances, it has to be held that the assessee sent Form No. 6 by postal Receipt No. 579 dated September 8, 1971. The Appellate Assistant Commissioner as well as the Appellate Tribunal have accepted the contention of the assessee that Form No. 6 was sent to the Income Tax Officer on September 8, 1971, and this is a finding of fact which cannot be disturbed in this reference application. I am of the view that once the assessee applied for extension of time and the Income Tax Officer does not reject the prayer for extension of time for filing the return and does not communicate it to the assessee, then it has to be presumed that the assessee is right in presuming that extension of time has been granted. In this view, I am supported by a decision in the case of Shanlal Shantilal and Bros. Vs. Union of India, , where it has been held by the Bombay High Court that if the Department chooses not to reply to the assessee''s application for extension of time for filing return within the time applied for by the assessee, time is deemed to have been extended as prayed for by the assessee and he would be justified in assuming that his application has been granted by the Department. Under such circumstances, I hold that the Appellate Assistant Commissioner and the Appellate Tribunal rightly held that the assessee was

justified in presuming that the Income Tax Officer had extended the time for filing the return till March 31, 1972. As the assessee filed the return on February 11, 1972, it has to be held that the return was filed within the extended time.

8. The application in Form No. 12 can be filed along with the return under proviso (ii) to Section 184(7) of the Act. Even if it is held that the present proviso (ii) was not applicable, then the proviso as it existed before April 1, 1971, also laid down that the declaration in Form No. 12 could be filed along with the return. Hence, I hold that the Tribunal was justified in law in holding that although no order was passed by the Income Tax Officer extending the date for furnishing the return u/s 139(1) of the Act, there was continuation of registration of the assessee-firm.

9. I, therefore, answer the question referred to above in the affirmative and in favour of the assessee and against the Revenue. There will be no order as to costs.

Uday Sinha, J.

10. I agree.

