
(1982) 03 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 135 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Devilal Shankardayal

RESPONDENT

Date of Decision : 31-03-1982

Acts Referred:

Income Tax Act, 1961 — Section 184(7), 246(1)

Citation : (1983) 33 CTR 253 : (1983) 140 ITR 413

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C Mukati, for the Appellant; G.D. Atal, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961, (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the AAC had the power to entertain an appeal against the ITO's refusal to grant the benefit of registration u/s 184(7) and consequently in confirming the AAC's order ?"

2. The material facts giving rise to this reference, briefly are as follows :

The assessee filed a return of income for the assessment years 1973-74 and 1974-75. Registration was granted to the assessee for the year 1972-73, but the ITO refused the claim of the assessee for a continuation of the registration for the years 1973-74 and 1974-75 on the ground that there was a delay in filing the declaration in Form No. 12. Aggrieved by that order, the assessee preferred an appeal before the AAC. The AAC held that there was a reasonable cause for the delay and that in view of the fact that registration had been granted to the assessee for the assessment year 1972-73 and that there had been no change in the constitution of the firm, the registration should have been allowed to be confirmed for the assessment years 1973-74 and 1974-75. In this view of the

matter, the AAC allowed the appeal. Aggrieved by that order, the Department preferred an appeal before the Tribunal. It was urged before the Tribunal that the appeal before the AAC was not competent. The Tribunal rejected this contention and dismissed the appeal. Aggrieved by that order, the Department sought a reference and it is at the instance of the Department that the aforesaid question of law has been referred to this court for its opinion.

3. Having heard the learned counsel for the parties, we have come to the conclusion that this reference deserves to be answered in the affirmative and against the Department. A similar question came up for consideration before a Division Bench of this court in *Durgaprasad Rajaram Adatiya Vs. Commissioner of Income Tax*, . The Division Bench in that case has observed as follows (p. 604):

"Section 184(4) requires that an application for registration should be made before the end of the previous year for the assessment year in respect of which registration is sought. The proviso to this section empowers the ITO to entertain an application made after the end of the previous year if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year. Section 185(1) then provides that on receipt of an application for the registration of a firm, the ITO shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership. It further provides that, (a) if the ITO is satisfied that there is or there 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, and (b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm. Section 246 gives a list of appealable orders and one of the orders Appealable is an order under Clause (b) of Section 185(1), i.e., an order in writing refusing to register the firm. The Madras High Court in *Chandrasekharan v. CIT* [1914] 96 ITR 711, held that an order dismissing an application for registration on the ground that it is barred by time is not an order u/s 185(1)(b) refusing to register the firm and, therefore, is not appealable. The Gujarat, Allahabad, Andhra Pradesh and Punjab & Haryana High Courts have, however, taken a different view : [See *Commissioner of Income Tax, Gujrat Vs. Dineschandra Industries*, , *Income Tax Officer Vs. Vinod Krishna Som Prakash*, , *Additional Commissioner of Income Tax Vs. Chekka Ayyanna and Others*, and *Commissioner of Income Tax Vs. Beri Chemical Industries*, . The reasoning of the majority High Courts is that when the ITO after finding that the application is barred by time does not go into the question regarding the genuineness of the firm and its constitution, still it can be said that he refuses registration as he is not satisfied on these questions. In other words, the delay beyond the prescribed period in filing the application prevents the ITO in being satisfied on the relevant questions which lead to the refusal of the application and, therefore, a case where the application is dismissed on the ground of limitation is also a case falling u/s 185(1)(b). This view, in our opinion, appears to be reasonable and should be accepted. A statutory provision conferring a right of appeal should, in case of doubt, be liberally construed. Moreover, in the matter of construction of a

statute like the I.T. Act, which is of all India application, it is necessary that there should be uniformity as far as possible amongst the different High Courts. For these reasons, we fall in line with the majority High Courts and we hold that the orders dismissing the assessee's applications for registration were appealable."

4. We respectfully agree with the aforesaid observations. In our opinion, therefore, on the facts and in the circumstances of the case, the Tribunal was right in holding that the appeal filed by the assessee before the AAC was competent.

5. Our answer to the question referred to this court for its opinion is, therefore, in the affirmative and against the Revenue. Under the circumstances of the case, parties shall bear their own costs of this reference.