**(1978) 11 AHC CK 0049**

**In the Allahabad High Court**

**Case No :** Income-tax Reference No. 473 of 1976

Commissioner of Income Tax — APPELLANT

Vs

Duli Singh and Sons — RESPONDENT

**Date of Decision :** 03-11-1978

**Acts Referred:**
Income Tax Act, 1961 — Section 186(2)

**Citation :** (1979) 11 CTR 234 : (1979) 117 ITR 254 : (1979) 1 TAXMAN 32

**Hon'ble Judges :** Satish Chandra, C.J;M.B. Farooqi, J

**Bench :** Division Bench

**Advocate :** A. Gupta, for the Appellant; A.K. Singh, for the Respondent

**Final Decision :** Allowed

## Judgement

Satish Chandra, C.J.—The question of law referred for our opinion is :

"Whether the Income Tax Officer was not justified in refusing to continue registration in view of the provisions of Section 186(2) of the Income Tax Act, 1961?"

2. The assessee, which is a partnership firm, was granted registration in the year 1965-66. The registration was continuously renewed till 1968-69. For the year 1969-70 it had, within the prescribed time, filed the requisite declaration in Form No. 12. The assessee filed a return of its income. Unfortunately, the assessee could not appear before the ITO to support its return of income. The ITO passed an ex parte assessment order u/s 144 of the Act. As the assessee had not appeared, he refused registration to the firm.

3. The assessee felt aggrieved and went up in appeal against the order refusing registration to the firm u/s 186(2) of the Act. The AAC set aside the order of the ITO. He held that the firm was entitled to registration. Firstly, because the firm was genuine and it had been, in fact, granted registration from the assessment year 1965-66, and the same was continued ever since. In the next place, it was held that before taking action u/s 186(2), it was incumbent to give fourteen

days'' notice of an intention to refuse registration. But, in fact, no such notice was given to the assessee. Both these findings were upheld by the Tribunal.

4. We have heard learned counsel. We find that the finding of the Tribunal is that no notice u/s 186(2) was given to the firm and the assessee was not guilty of any contumacious conduct. The ITO was in error in refusing to grant the registration. Further, fourteen days'' notice was necessary before the ITO could act u/s 186(2) of the Act. In our opinion, the finding on the question is conclusive. The Tribunal was, in the circumstances, right in holding that the ITO was not justified in refusing to continue the registration and in cancelling it. In the result, we answer the question referred to us in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to its costs, which are assessed at Rs. 200.