(1992) 11 BOM CK 0030

In the Bombay High Court

Case No : Income-tax Reference No. 284 of 1977

Commissioner of Income Tax APPELLANT

Vs

Ideal Trading Co. RESPONDENT

Date of Decision : 03-11-1992

Acts Referred:
Income Tax Act, 1961 — Section 185

Citation : (1993) 115 CTR 177 : (1994) 207 ITR 705 : (1993) 68 TAXMAN 483

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : Dr. V. Balasubramanian, for the Appellant;

Judgement

B.N. Srikrishna, J.—In this reference u/s 256(1), the question of law referred for the opinion of this court is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was in law or no facts justified in directing the Income Tax Officer to consider the assessee firm''s claim for registration afresh on the merits and according to law, after allowing it a reasonable opportunity to make an application for the condonation of the delay, of which it was guilty in the matter of seeking registration u/s 185 of the Income Tax Act, 1961, for the assessment year 1973-74 ?"

2. The reference pertains to the assessment year 1973-74. The assessee is a partnership firm constituted under added of partnership dated April 6, 1972. The assessee did not file its application in Form No. 11 during the previous year for grant of registration u/s 185, but filed an application in Form No. 11-A on August 13, 1973, along with the return of income. The Income Tax Officer refused to grant registration to the assessee-firm and competed the assessment proceedings on the basis that the assessee was an unregistered firm. He also refused to take notice of the application in Form No. 11-A as being in a wrong form and out of time. The appeal of the assessee failed as the Appellate

Commissioner upheld the order of the Income Tax officer. The Appellate Tribunal took the view that natural justice required that the Income Tax Officer should have brought to the notice of the assessee that its application was defective and/ or out of time and given him an opportunity to rectify the defect. Since the records did not show that the Income Tax Officer has given any such opportunity directly or indirectly to the assessee, the Tribunal set aside the order of the Appellate Assistant Commissioner and directed the Income Tax officer to consider the assessee''s claim for registration afresh on the merits according to law, after giving the assessee a reasonable opportunity to make an application for condonation of delay in making the application.

3. In our view, the Tribunal''s direction is wholly unexceptionable and there was no need to make a reference of this matter to this court u/s 256(1). Apart from whether a power of condonation was available to the Income Tax Officer or not, in a situation like this, the view taken by the Income Tax Officer and the Appellate Assistant Commissioner are, to say the least, hyper-technical and rigid. We wholly endorse the approach of the Tribunal in the matter that the issue had to be reconsidered by the Income Tax Officer after giving a fresh opportunity to the assessee for hearing his explanation, if any.

4. In the result, the question referred for our opinion is answered in the affirmative and in favour of the assessee.

5. There will, however, be no order as to costs.