
(1980) 09 KL CK 0024

In the High Court Of Kerala

Case No : Income Tax Reference No. 106 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Kepeecee Trading Co.

RESPONDENT

Date of Decision : 03-09-1980

Acts Referred:

Income Tax Act, 1961 — Section 184(7)

Citation : (1981) 23 CTR 34 : (1981) 129 ITR 124

Hon'ble Judges : V. Balakrishna Eradi, C.J;K. Bhaskaran, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; C.S. Balagangadharan and K.S. Paripoornan, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Cochin Bench (hereinafter called "the Tribunal"), has referred to this court u/s 256(1) of the I.T. Act 1961 (for short "the Act"), the following question of law as arising out of its order dated August 31, 1977, in I.T.A. No. 326/Coch/76-77:

" Whether, on the facts and circumstances of the case, the appeal preferred by the assessee to the Appellate Assistant Commissioner of Income Tax against the order of the Income Tax Officer declining to con- done the delay in filing the declaration in Form No, 12 for the assessment year 1973-74 and consequently declining to grant continuance of registration for the said assessment year was competent ? "

2. The assessee is a firm of six partners constituted under a deed dated September 16, 1971, for the purpose of carrying on business in purchase and sale of pepper, dry ginger, etc. The firm had been granted registration for the assessment year 1972-73. In this case we are concerned with the assessment year 1973-74, for which the relevant period of account is the year ending March 31, 1973. Along with the return for the said assessment year, which was filed only on July 1, 1974, the assessee presented before the ITO a declaration in Form No. 12 in purported compliance with the requirements of the proviso to

Sub-section (7) of Section 184 of the Act. The ITO issued a communication to the assessee pointing out that the said declaration had been filed beyond the time-limit specified in the said proviso. Thereupon the assessee, by its letter dated September 24, 1974, submitted its explanation for the delay in furnishing the declaration and requested that the declaration filed by the firm before the assessment was made may be accepted on the ground that sufficient cause had been made out for the delay. The assessment was thereafter finalised by the ITO as per the assessment order dated December 31, 1975, a copy of which has been produced as annex. " B " to the statement of case. By the said order the ITO rejected the assessee's request for accepting the declaration filed beyond the prescribed time-limit and proceeded to assess the firm in the status of an unregistered firm. Thereupon the assessee preferred an appeal before the concerned AAC, against the quantification of the taxable income of the firm made in the assessment. The only point taken in the appeal was that the assessment should have been made against the firm as a registered firm and that the ITO was not justified in rejecting the assessee's request to accept the declaration filed under the proviso to Section 184(7) and refusing to extend to the assessee the benefit of continuance of registration under Sub-section (7) of Section 184.

3. The AAC allowed the appeal on the short ground that, since the ITO had already completed the assessment of one of the partners of the assessee-firm treating the firm as a registered firm for the assessment year concerned in this case by an order dated September 27, 1975, it was not open to the assessing authority thereafter to take up a different position in the assessment order passed against the firm by treating it as an unregistered firm. In this view, the appellate authority allowed the appeal, set aside the assessment made by the ITO and directed the ITO to accept the declaration filed by the assessee in Form No. 12 and make a fresh assessment treating the firm as a registered firm. The department took up the matter in second appeal before the Tribunal and the main contention urged therein was that no appeal lay before the AAC against the refusal by the ITO to allow the assessee-firm to furnish the declaration referred to in the proviso to Sub-section (7) of Section 187 beyond the time-limit specified therein. The Tribunal rejected the said contention following an earlier decision rendered by it on the same point in another appeal--I.T.A. No. 162(Coch)76-77. A further question had also been raised in the appeal as to whether the assessee-firm could be said to have been prevented with sufficient cause from furnishing the declaration within the prescribed time-limit and this point was decided by the Tribunal in favour of the assessee by holding that the evidence available on record went to show that the assessee was prevented by sufficient cause from furnishing the declaration within the time-limit specified. In the light of the said finding, the Tribunal sustained the order of remand passed by the AAC even though it was not in agreement with the reason stated by the AAC for setting aside the assessment order made by the ITO.

4. In this reference we are concerned only with the short question as to whether the appeal preferred by the assessee against the order of the AAC was

maintainable in law. From the facts narrated above, it will be clearly seen that the appeal in question, against the maintainability of which the department had taken objection, was filed against the assessment order made against the assessee for the year 1973-74. It was by that order and not by any separate order that the ITO had held that the assessee-firm was liable to be treated and assessed as an unregistered firm. Undoubtedly, the assessee had the right to prefer an appeal before the AAC against the said assessment order and in such an appeal it was perfectly open to the assessee to canvass the correctness of every finding entered by the assessing authority in the order of assessment. We do not, therefore, see any merit in the contention raised by the revenue that the appeal filed by the assessee before the AAC complaining against the firm being treated as an unregistered firm on the ground that the declaration required to be filed under the proviso to Section 184(7) of the Act had been filed beyond time was incompetent. We, accordingly, answer the question referred in the affirmative, i.e., in favour of the assessee and against the department. The parties will bear their respective costs.

5. A copy of this judgment under the seal of the court and the signature of the Registrar will be forwarded to the Tribunal as required by law.