(1992) 12 PAT CK 0013

In the Patna High Court

Case No : Taxation Case No. 11 of 1982

Commissioner of Income Tax APPELLANT

Vs

K.H. Pandeya RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Citation : (1992) 12 PAT CK 0013

Judgement

G.C. Bharuka, J.—In this reference which pertains to the assessment year 1973-74, the Tribunal has referred the following two questions of law for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the order passed by the Income Tax Officer u/s 184(7) of the Income Tax Act, 1961, refusing to allow continuation of registration was appealable to the Appellate Assistant Commissioner ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the quantum as well as the question of registration could be challenged by filing only one appeal ?"

2. In this case, the assessee is a registered firm. For the assessment year 1973-74, its previous year ended on November 5, 1972. For continuation Of its registration for the assessment year in question it filed a declaration in Form No. 12 as required u/s 184(7) of the Income Tax Act, 1961 (hereinafter in short, "the Act"), read with the rules on June 30, 1973. Since the said declaration was found not to be in order, therefore, another declaration was filed on September 26, 1975, much before the completion of the assessment. The explanation given for delayed filing of duly filled up and signed declaration was not accepted by the Income Tax Officer and accordingly continuation of registration was refused by passing a composite order relating to assessment as well as the registration. The assessee preferred an appeal against the said order. The assessee having failed before the Appellate Assistant Commissioner, it went in second appeal before the Tribunal and succeeded. The Tribunal, apart from granting relief in quantum, also

directed continuation of registration.

3. Mr. Vidyarthi, appearing for the Revenue, has very fairly conceded that so far as question No. 1 referred to this court for the opinion is concerned, it is now concluded by the judgments of this court reported in Commissioner of Income Tax Vs. Mumtaz Ali and Others, , Commissioner of Income Tax Vs. B.L. Agarwalla, and Commissioner of Income Tax Vs. Manuram Babulal, and the present reference application can be disposed of in terms of those judgments. In Commissioner of Income Tax Vs. B.L. Agarwalla, . relying on the other decision of this court in the case of Commissioner of Income Tax Vs. Mumtaz Ali and Others, , this court has held that "an appeal lies against the order of the Income Tax Officer refusing continuation of registration u/s 184(7) of the Act before the Appellate Assistant Commissioner and, as such, the second appeal before the Tribunal is obviously competent".

4. So far as the second question is concerned, it is an admitted position that the Income Tax Officer has determined the tax liability of the assessee by simultaneous exercise of his jurisdiction under Sections 145(3) and 184(7) of the Act, whereby apart from assessing the income, he has also decided the status of the assessee as unregistered firm.

5. Section 246(1)(c) of the Act as it stood at the material time read as under :

"Section 246. Any assessee aggrieved by any of the following orders of an Income Tax Officer may appeal to the Appellate Assistant Commissioner against such order--....

(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under Sub-section (3) of Section 143 or Section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;"

6. From the aforesaid provision, it is apparent that an assessee has been given a right of appeal against an order by which he has been subjected to assessment of its income or determination of his status to his prejudice. The Act nowhere contemplates that even against a composite order passed by the Income Tax Officer pursuant to the powers vested in him under different sections of the Act, separate appeals have to be preferred with reference to the sections under which the Income Tax Officer has sought to exercise his jurisdiction. Therefore, in my view the appeal as filed against the common order passed by the Income Tax Officer was quite maintainable.

7. The above view of mine is in parity with the view taken by the other High Courts as well. I may refer to some of the decisions in this regard, namely, Commissioner of Income Tax, Bombay City III Vs. Hansa Agencies, , Commissioner of Income Tax Vs. Rupa Traders, , Ansari Jewellers v. CIT [19871 167 ITR 380 , Bishambar Dayal Sriniwas Vs. Commissioner of Income Tax, and

Patel and Company Vs. Commissioner of Income Tax, .

8. For the reasons aforesaid both the questions are answered in the affirmative and in favour of the assessee. There will be no order as to costs.

9. Let a copy of this judgment be sent to the Income Tax Appellate Tribunal, Patna Bench, as required u/s 260 of the Act.

Aftab Alam, J.

10. I agree.

