
(1999) 02 MP CK 0036

In the Madhya Pradesh High Court

Case No : Income-tax Reference No's. 58 to 60 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Labh Singh and Co.

RESPONDENT

Date of Decision : 05-02-1999

Acts Referred:

Income Tax Act, 1961 — Section 184, 185, 186

Citation : (2000) 245 ITR 608 : (2001) 118 TAXMAN 63

Hon'ble Judges : Nirmal Kumar Jain, J; Bashir Ahmed Khan, J

Bench : Division Bench

Advocate : S.K. Pawnekar, for the Appellant; Nazir Singh, for the Respondent

Judgement

1. All these three applications made by the Revenue u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), are disposed of by this common order.

2. It appears that the assessee was granted registration for the assessment year 1983-84 by the Assessing Officer vide order dated August 22, 1985. Thereafter the Assessing Officer passed an order u/s 185(1)(b) for the same assessment year and denied registration to the assessee on the following grounds :

(I) partners of the firm comprised Shri Iqbal Singh, his wife, his daughter and four sons and one daughter-in-law ;

(II) except Iqbal Singh, others do not have any independent source of income.

3. This order was also passed for the assessment years 1984-85 and 1985-86.

4. The assessee took an appeal against these orders and the Commissioner of Income Tax (Appeals) by order dated March 18, 1993, ruled thus :

"If the Assessing Officer subsequently found that the firm was not genuine then he should have cancelled the registration u/s 186(1). If no action u/s 186 is taken cancelling the registration, the order passed u/s 185(1)(b) cannot be held in accordance with law. Once the assessment has been framed u/s 143(1), the

Assessing Officer could have assumed legitimate jurisdiction u/s 143(2)(b) only after obtaining prior approval of the Inspecting Assistant Commissioner. In view of the facts, the assessee is entitled to registration in accordance with law as it satisfies the requirements of Section 184 for grant of registration u/s 185."

5. This was affirmed by the Tribunal in the appeal taken by the Department. Further, it was noticed that the individual shares of the partners of the assessee-firm were specified therein and Form No. 11 was duly filed along with the partnership deed and that registration was granted to the firm after due enquiry by the Assessing Officer who had felt satisfied that there was a genuine firm in existence.

6. In this view of the matter, the dispute between various forums appears to have converged on the genuineness or otherwise of the firm with the Assessing Officer finding it not genuine subsequently after having accorded registration vide order dated August 22, 1985, and the Commissioner of Income Tax (Appeals) and the Tribunal reaching a contrary conclusion on the facts and in the light of the provisions of Section 186(1).

7. In this background though the question, superficially appears to be a mixed question of law and fact it appears to have been clinched more on the factual front than otherwise by the two appellate forums finding the assessee-firm genuine. Apart from this a perusal of the provisions of Section 186 would also show that registration accorded required to be cancelled in accordance with the requirements laid down therein and continued registration cannot be denied for a subsequent assessment year for the heck of it.

8. Having said so, we are not inclined to call for the statement of the case or require the Tribunal to refer the stated question to this court for any opinion.

9. The application of the Revenue is accordingly dismissed.