(1991) 10 AHC CK 0021

In the Allahabad High Court

Case No : Income-tax Reference No. 150 of 1979

Commissioner of Income Tax APPELLANT

Vs

Narendra Agencies RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 184(7), 185(5), 186(2), 246

Citation : (1993) 199 ITR 476

Hon'ble Judges : R.K. Gulati, J;A.N. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.N. Verma, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following two questions for our opinion :

" 1. Whether, on the facts and in the circumstances of the cases, the Income tax Appellate Tribunal was correct in law in holding that the provisions of Section 185(5) of the Income tax Act, 1961, apply only to a case where an application for registration has been made for the first time and not to the case of renewal ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the Income Tax Officer could not refuse renewal of registration u/s 185(5) of the Income Tax Act, 1961? "

Learned standing counsel representing the Commissioner of Income Tax does not dispute that the questions referred are covered by two decisions of this court reported in Nand Singh Taneja and Sons Vs. Commissioner of Income Tax, and ADDL. COMMISSIONER OF Income Tax, LUCKNOW Vs. RADHA KISHAN BANWARILAL., . The decisions fully support the assessee.

2. The relevant assessment year is 1972-73. The Income Tax Officer made an assessment u/s 144 of the Income tax Act, 1961, on the ground that there was no compliance by the assessee with the notice issued u/s 142(1). The assessee

had been allowed registration for the assessment year 1971-72. The Income Tax Officer declined to allow renewal of registration on the ground that the assessment had been completed u/s 144, as it was not possible to verify whether the profits had been allocated in consonance with the ratio specified in the partnership deed. He, accordingly, made the assessment in the status of an unregistered firm.

3. In the appeal before the Appellate Assistant Commissioner, it was submitted that the assessee had been allowed registration for the preceding year and it had also furnished a declaration in Form No. 12 and complied with the requirements necessary for renewal of registration. That being so, it was submitted, the Income Tax Officer had committed an error in refusing the renewal of registration and making the assessment in the status of an unregistered firm. The Appellate Assistant Commissioner, however, negatived the contention and held that the considerations for the two years, i.e., the year in question and the preceding year were different and that, consequently, the Income Tax Officer had rightly refused renewal of registration.

4. On a further appeal before the Tribunal, learned counsel for the assessee submitted that the assessee had furnished Form No. 12 and complied with the requirement for renewal of registration. He further submitted that Section 185(5) of the Income Tax Act did not apply to the case of renewal of registration. In support, reliance was placed on Nand Singh Taneja and Sons Vs. Commissioner of Income Tax, . The Tribunal accepted the submissions of the assessee, set aside the orders of the Income Tax Officer and the Appellate Assistant Commissioner and sent back the case to the Income Tax Officer for verification whether the assessee had complied with the formalities laid down for renewal of registration. The Tribunal held that the assessee having been allowed registration for the preceding years, the Income Tax Officer could not legally refuse renewal of registration u/s 185(5), relying on Nand Singh Taneja and Sons Vs. Commissioner of Income Tax, .

5. In the case of Nand Singh Taneja and Sons Vs. Commissioner of Income Tax, , this court had occasion to consider the scope and effect of Sections 185(5), 186(2) and 246. On an analysis of these provisions and the scheme of the enactment, their Lordships ruled that for failure to file a return the Income Tax Officer can refuse to register the firm u/s 185(5). Likewise, u/s 186(2), the registration of a firm can be cancelled where the firm has been registered or its registration has effect under Sub-section (7) of Section 184, if there is any such failure on the part of the firm as is mentioned in Section 144. However, both these actions viz., refusal of registration u/s 185(5) or cancellation thereof u/s 186(2) require and contemplate specific orders which are appealable u/s 246 of the Income Tax Act. The Income Tax Officer cannot, therefore, ignore the declaration furnished by the firm u/s 184(7) on the ground that the firm had not furnished the return of its income. With respect, we entirely agree.

6. The Income Tax Officer may refuse renewal of registration u/s 185(5) or

cancel it u/s 186(2) but he is not authorised to ignore the declaration furnished by the firm u/s 184(7) and make the assessment in the status of an unregistered firm. The statute contemplates that the refusal u/s 185(5) or cancellation u/s 186(2) by the Income Tax Officer must be effected by a positive order. In the case of cancellation, the statute further requires that an opportunity must be given before the registration is cancelled.

7. In the absence of such a positive order, therefore, it is not open to the Income Tax Officer to refuse renewal of registration u/s 185(5). Nor can he ignore the declaration furnished u/s 184(7) simply on the ground that the firm has not furnished the return of its income.

8. In the present case, undisputedly, the assessee had been allowed registration for the preceding year and the Income Tax Officer refused renewal of registration in the purported exercise of his power u/s 185(5) on the ground of non-compliance with the notice u/s 142(1). No positive order of refusal to renew registration u/s 185(5) nor of cancellation u/s 186(2) had been passed. That being so, the Income Tax Officer and the Appellate Assistant Commissioner both committed an error in making the assessment in the status of unregistered firm.

9. The view expressed in Nand Singh Taneja and Sons Vs. Commissioner of Income Tax, has been reiterated by this court in the case of ADDL. COMMISSIONER OF Income Tax, LUCKNOW Vs. RADHA KISHAN BANWARILAL., . In this case also, the High Court ruled that the Income Tax Officer has no power to refuse registration to the firm u/s 185(5) on the ground that the firm had not complied with the notices under Sections 142(1) and 143(2). The Bench went on to rule that Section 185(5) applied only at the initial stage of granting or refusing the registration. Subsequently, the Income tax Officer could, if at all, pass an order of cancellation of registration u/s 186(2) of the Act but that could be done only after giving the requisite notice and an opportunity of being heard.

10. The two decisions cited above conclude the controversy before us. The Tribunal was, therefore, right in taking the view that the Revenue authorities had wrongly and illegally refused renewal of registration to the assessee u/s 185(5).

11. For the Revenue, no decision contrary to the decisions of our court cited above with which we are in respectful agreement has been cited.

12. We, therefore, answer the questions referred for our opinion in the affirmative, in favour of the assessee and against the Revenue. The assessee will be entitled to his costs which we assess at Rs. 250.