
(1996) 09 AP CK 0015

In the Andhra Pradesh High Court

Case No : Referred Case No. 42 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Panduranga Engineering Co.

RESPONDENT

Date of Decision : 18-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 143(2), 144, 144(1), 185(5)

Citation : (1997) 223 ITR 400

Hon'ble Judges : T.C. Rangarajan, J;M.N. Rao, J

Bench : Division Bench

Advocate : Deokinandan and J.V. Prasad, for the Appellant; K.M.L. Majele and Y. Ratnakar, for the Respondent

Judgement

M.N. Rao, J.—The Income Tax Appellate Tribunal, in respect of the assessment year 1982-83 pertaining to the assessee, Panduranga Engineering Co. - which is a partnership firm situate at Vijayawada, referred the following question for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal was justified in holding that registration granted to the assessee-firm should not be refused u/s 185(5) of the Act ?"

2. In respect of the above assessment year, the Income Tax Officer issued notices under sections 142(1) and 143(2) of the Income Tax Act, 1961 (for short, "the Act"), to the assessee and as the letter did not comply with the requirements of the said notices, the assessing authority issued a notice u/s 186(2) read with section 185(5) also seeking to cancel the registration of the firm. As there was no response even to that notice, the assessment was made according to the best judgment on July 24, 1984, and, on the same day, another order was passed contemporaneously refusing continuation of registration of the firm in respect of that year. It appears, the best judgment assessment was upheld in appeal. As regards the order passed u/s 186, the matter was carried in appeal unsuccessfully. Before the appellate authority, it was pleaded by the

assessee that his failure to be present on the dates given by the assessing authority was because of his pre-occupation, viz., attending on his ailing parents.

3. The appellate authority dismissed the appeal on the view that the assessee had not only disregarded the notices issued under sections 143(2) and 142(1) but also consciously disregarded the notice u/s 186 and this act was nothing but indifference on the part of the assessee. The Appellate Tribunal, in the second appeal, set aside the view taken by the appellate authority on the ground that u/s 185(5), the Assessing Officer has discretionary power to refuse to register the firm and such a discretion must be exercised fairly and reasonably. The registration cannot automatically be refused because of the passing of the best judgment assessment. In respect of this proposition, the Tribunal placed reliance upon four ruling- COMMISSIONER OF Income Tax, MADRAS Vs. KRISHNAMMA and CO., GUDUR., ; Phoolchand Ramsahai Vs. Commissioner of Income Tax, ; J. M. Sheth Vs. Commissioner of Income Tax, Madras, and C.K. Abdul Khader and Co. Vs. Income Tax Officer, B-Ward and Another, . The Tribunal, while allowing the appeal, set aside the order passed by the assessing authority u/s 185(5) and remitted the matter to the Income Tax Officer "to consider the question of allowing instance of the Revenue, the above question was referred by the Tribunal for the opinion of this court.

4. Sir J.V. Prasad, learned counsel for the Revenue, has argued that when the assessee had not responded to the notices issued not only under sections 142(1) and 143(2) but also the notice issued u/s 186, it resulted in refusal to continue the registration. It is not incumbent upon the Assessing Officer to state any reasons for taking away the benefit of registration in a case where the assessee had suffered best judgment assessment. We are not inclined to agree with the submissions of learned counsel.

5. An identical question arose before a Division Bench of this court in COMMISSIONER OF Income Tax, MADRAS Vs. KRISHNAMMA and CO., GUDUR., . Subba Rao C.J. (as he then was), while considering the ambit of the power to refuse continuation of registration in respect of an assessee who suffered best judgment assessment under the Indian Income Tax Act, 1922, held (at page 279) :

"Section 23(4) does not purport to prescribe an automatic refusal of registration. Under that section, discretionary power is conferred on the Income Tax Officer to refuse registration in case an assessment is made under that section and, in this case, he did not purport to exercise his discretion one way or the other."

6. Elaborating on this concept, a Division Bench of the Madras High Court in J. M. Sheth Vs. Commissioner of Income Tax, Madras, observed (at page 295) :

"The assessee has a right under the Act to claim the benefit of registration under certain conditions laid down by the Act. If those conditions are present he would be entitled to registration. That right should not be taken away merely because he suffers an assessment on the best judgment basis u/s 23(4) of the Act. The

assessee does not forfeit the right of registration quite automatically as a consequence of such defaults which throw the doors open to an estimate assessment."

7. Explaining the significance of the occurrence of the words "may" and "shall" in the same provision, the Division Bench expressed the view (at page 296) :

"The use of the words "may refuse" in section 23(4) would rather indicate that the Income Tax Officer has a discretion not to refuse registration or cancel registration even in spite of the default of the assessee. Significantly, the statute uses the words "shall make the assessment to the best of his judgment" in the first part of the section. If the words "shall" and "may" are found in two different limbs of the same section, there cannot be a better legislative pointer to indicate that the first is obligatory and the second is discretionary. We have no doubt that the statute does not compel the officer to deprive the assessee of the benefit of registration under the last part of section 23(4). In other words, it would be wrong to assume that the defaults listed in section 23(4) of the Act would lead to a two-fold penal consequence : (i) a best judgment assessment, and (ii) in the case of firms, refusal to register or cancellation of the existing registration, if any. It is, therefore, incumbent upon the Income Tax Officer to consider the question of registration on the materials available before him instead of refusing registration on the ground that a different conclusion would be illogical or not self-consistent."

8. We are bound by the rule laid down by this court and with respect, we agree with the exposition of law by the Madras High Court in J. M. Sheth Vs. Commissioner of Income Tax, Madras, .

9. Section 144(1) confers power on the Assessing Officer to make best judgment assessment in the event of the assessee failing to respond to notices issued under clauses (a), (b) and (c) of sub-section (1). Section 185(5) lays down that the Assessing Officer "may refuse to register" a firm for that assessment year because of the failure of the assessee to comply with the requirements of the notices issued u/s 144(1). Cancellation of registration is dealt with in section 186. Sub-section (2) imposes an obligation on the part of the Assessing Officer, if he chooses to cancel the registration of the firm on the ground of failure to comply with the requirements in respect of any assessment year as are mentioned in section 144, to give fourteen days" notice intimating his intention to cancel the registration. From a reading of the above relevant statutory provisions, we are unable to draw the inference that in every case where a best judgment assessment was suffered by the assessee, the Assessing Officer must invariably pass an order refusing to continue the registration of the firm for the assessment year in question. Cancellation of the registration should only be after complying with the principles of natural justice, which necessarily implies that if the Assessing Officer is satisfied with the explanation offered by the assessee, he may drop the proposal to cancel the registration. Even if the assessee has not responded to the 14 days" notice issued u/s 186, it cannot be predicated that the

Assessing Officer must pass an order automatically cancelling the registration. Even in such a case, it is incumbent on the part of the Assessing Officer to consider the available material on record by application of mind for the purpose of exercising his discretion in regard to cancellation of the registration. Withdrawal of the benefit of registration in respect of an assessment year results in serious consequences. It is penal in nature in that the consequence are very serious to the assessee and that is why discretion is conferred on the Assessing Officer by requiring him to give a second opportunity. A penal provision must always be interpreted strictly and if two views are possible, the benefit should go to the assessee. The Income Tax Appellate Tribunal had not decided the matter on the merits; it only remitted the matter to the Income Tax Officer for fresh consideration by exercising his discretion properly on the materials available. There was no necessity for the Tribunal to refer the question for the opinion of this court especially when it was directly covered by a series of decisions including the one by this court.

10. For these reasons, we answer the question in the affirmative, in favour of the assessee and against the Revenue. No costs.