(2002) 08 MAD CK 0001

In the Madras High Court

Case No : Tax Case No''s. 1150 to 1152 of 1992

Commissioner of Income Tax — APPELLANT

Vs

Ramraj Construction — RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Income Tax Act, 1961 — Section 186

Citation : (2004) 186 CTR 682 : (2004) 136 TAXMAN 162

Hon'ble Judges : V.S. Sirpurkar, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : T.C.A. Ramanujam, for the Appellant; None, for the Respondent

Judgement

N.V. Balasubramanian, J.—The question that arises in all tax cases is whether the ITO was justified in cancelling the registration granted to

the assessee-firm for the assessment years from 1971-72 to 1973-74.

2. The ITO originally granted registration to the assessee-firm and later, on the basis of the settlement petition filed by the assessee, cancelled the

registration and assessed the assessee-firm as an unregistered firm. The CIT(A) agreed with the views of the ITO and upheld the order of the ITO

holding that the assessee had not distributed the concealed profits and not entitled to the registration.

3. On further appeal by the assessee before the Tribunal, the Tribunal, following its earlier order rendered in the case of M/s Ramraj Finance,

Madras, held that the cancellation of registration for the assessment years from 1971-72 to 1973-74 was not warranted. It is against this order, the

present reference has been made, and the Tribunal on the basis of the directions of this Court has stated a case and referred the following questions of law for consideration :

1. Whether, on the facts and in the circumstances of the case the Tribunal is justified in holding and had valid materials to hold that the assessee-

firm is entitled to registration for the asst. yrs. 1971-72, 1972-73, 1973-74 and that no material or evidence was brought on record by the

Department so as to deny the benefit of registration to the assessee ?

2. Whether, the Tribunal''s further finding that the question of genuineness of the firm, the share of the persons and distribution of profits can be

gone into and examined only at the time of grant of registration for the first time and once registration has been granted, the renewal is automatic, is

correct in law ?

4. The reference is pending from the year 1992 and in spite of that, the assessee has not yet been served till date. However, we find that the

reference arising out of an earlier order of the Tribunal rendered in the case of Ramraj Finance, Madras came up for consideration before this

Court in Tax Case Nos. 1449 to 1451 of 1986 and this Court upheld the order of the Tribunal holding that the assessee was entitled to the benefit

of registration. This Court answered both the questions referred at the instance of the Revenue against the Revenue and in favour of the assessee.

5. We find that the Tribunal has not given any independent reason apart from following its earlier order rendered in the case of Ramraj Finance,

Madras. Since this Court has already upheld the order of the Tribunal rendered in the case of Ramraj Finance, Madras, we are of the opinion that

both the questions referred , at the instance of the Revenue should also be answered, in favour of the assessee and against the Revenue.

Accordingly, following the judgment in Tax Case Nos. 1449 to 1451 of 1986 dt. 27th Aug., 1998, we answer both the questions against the

Revenue and in favour of the assessee. However, there will be no order as to costs.