
(1979) 09 AHC CK 0054

In the Allahabad High Court

Case No : Income-tax Reference No. 532 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Satya Narain Suresh Kumar

RESPONDENT

Date of Decision : 21-09-1979

Acts Referred:

Income Tax Act, 1961 — Section 184(7), 185(3), 186

Citation : (1980) 14 CTR 74 : (1979) 120 ITR 840

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati and Ashok Gupta, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The Income Tax Appellate Tribunal, Delhi Bench " C ", has referred the following four questions for opinion of this court :

" J. Whether, on the facts and in the circumstances of the case, the Tribunal was right in entertaining the appeal against an order of refusal to the registration of the firm on the basis of an order made in the assessment order itself though no separate order as such was made separately ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing the Income Tax Officer to take cognizance of the declaration for renewal of registration filed in Form No. 12 along with the return on March 27, 1973, a date falling after the completion of the assessment order (March 16, 1973) but prior to the service of the notice of demand on March 30, 1973, after considering the question on condonation of the delay in regard to the same ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that in such a case, the Income Tax Officer should have given an opportunity to the assessee before cancellation of registration u/s 185(5) ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in setting aside the order of the Income Tax Officer determining the status of the assessee as an unregistered firm and directing him to consider the matter regarding registration afresh after giving the assessee full opportunity of being heard ?"

2. The reference relates to the assessment year 1970-71. A notice u/s 139(2) of the IT. Act, 1961 (hereinafter referred to as " the Act "), was issued and served on the assessee on November 28, 1970. Subsequently, notices u/s 142(1) were also issued from time to time but the assessee did not put in appearance and as a result an assessment was made u/s 144 on the 16th March, 1973. The notice of demand was, however, served on 30th of March, 1973. Before the notice of demand could be served the assessee filed a return along with a declaration for renewal of the registration of the firm in Form No. 12 on the 27th of March, 1973,

3. No order was passed on this, as the assessment had already been made on the 16th March, 1973, and while passing the assessment order the ITO had taken the status of the firm as o! an unregistered firm because by that time no declaration u/s 184(7) of the Act had been filed. On appeal, the order passed by the ITO was confirmed. Three appeals were filed before the Tribunal, one arising out of the order u/s 144, the other u/s 146 and the third u/s 186. We are, in the present reference, concerned with the order passed u/s 186. The Tribunal has allowed the appeal on the view that the ITO had failed to apply his mind to the application for renewal of registration and has not granted any opportunity to the assessee before cancelling the registration and treating the firm as an unregistered firm.

4. As regards the maintainability of the appeal u/s 186, the Tribunal held that even though the order cancelling the registration merged in the assessment order yet the appeal filed by the assessee was maintainable,

5. We shall deal with the questions referred seriatim. In so far as the first question is concerned a Division Bench of this court in the case of Income Tax Officer Vs. Vinod Krishna Som Prakash, has held that an appeal; in these circumstances was maintainable even though the order cancelling the registration was incorporated in the assessment order itself. The answer to this question must, therefore, be in the affirmative and the view of the Tribunal is upheld.

6. So far as the 2nd, 3rd and 4th questions are concerned, they are interconnected and as such all of them should be dealt with together. In order to resolve the controversy a reference to Section 184(7), as it stood in the relevant assessment year, is necessary.

"184. (7) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year !

Provided that-

- (i) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; and
- (ii) the firm furnishes, along with its return of income for the assessment year concerned, a declaration to that effect, in the prescribed form and verified in the prescribed manner. "

7. Although at first rush Section 184(7) gives an impression that the registration granted to any firm for an assessment year will continue for subsequent assessment years, that is not so. The advantage is available only in case the assessee satisfied the conditions laid down in the proviso, for the language clearly indicates that before the conditions laid down in the proviso are satisfied the advantage of continuation of the registration provided in the first part of Section 184(7) does not ensure to the benefit of the assessee. In the present case, we are concerned with the second clause of the proviso which requires the firm to furnish along with its return of income for the assessment year concerned a declaration that there has been no change in the constitution of the firm or the shares of the partners as evidenced by the partnership deed on the basis of which registration was granted. In the present case, the firm filed its return and furnished the declaration in Form No. 12 after the assessment order had been passed. The question is whether this will satisfy the requirements of Section 184(7) or as to entitle the assessee to a continuation of the registration. In the case of *Balchand Vs. Income Tax Officer, Sagar*, it was held by the Supreme Court that a return cannot be filed after the assessment order was passed. Thus the return filed by the assessee after the assessment order was passed and the declaration filed in Form No. 12 along with the return could not be considered by the ITO for continuing the registration granted to the firm in the earlier year. In this view of the matter it was not necessary for the ITO to have given any opportunity of hearing to the assessee or to have considered the application for renewal of the registration on merits, for the declaration given was non est in the eye of law as it was filed after the assessment had already been completed.

8. We, accordingly, answer the first question in the affirmative, in favour of the assessee and against the department. The remaining three questions are answered in the negative, against the assessee and in favour of the department. As none has appeared on behalf of the assessee, there shall be no order as to costs.