(1995) 12 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 196 of 1995

Commissioner of Income Tax	APPELLANT
Vs	
Scientific Refractories	RESPONDENT

Date of Decision : 04-12-1995

Acts Referred:
Income Tax Act, 1961 — Section 184(7), 256, 256(1), 256(2)

Citation : (1996) 218 ITR 434 : (1996) 218 ITR 424

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant;

Judgement

A.R. Tiwari, J.—The applicant (Commissioner of Income Tax, Bhopal), has filed this application u/s 256(2) of the Income Tax Act, 1961, seeking direction to the Income Tax Appellate Tribunal, Indore, to state the case and refer the undernoted question to this court arising out of its order dated October 1, 1993, passed in I. T. A. No. 332/(Ind) of 1989 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing to allow continuation of registration even when Form No. 12 was not signed by all the partners personally ?"

2. The facts lie in a narrow compass. The non-applicant/assessee furnished Form No. 12 for continuation of registration for the assessment year 1985-86. The Assessing Officer found that the application seeking continuation of registration was not signed by three partners (Bipinkumar, Malayaketu and Smt. Shardadevi), He, therefore, examined the aforesaid partners. The Assessing Officer, was not satisfied about the genuineness, of the firm and thus declined continuation of registration. On appeal, the Deputy Commissioner of Income Tax (Appeals) found no merit in the action of the Assessing Officer and directed that continuation of registration be allowed. On further appeal by the Department, the Tribunal upheld the order of the Deputy Commissioner of Income Tax (Appeals).

The Department felt aggrieved by the order of the Tribunal and, therefore, submitted the application u/s 256(1) of the aforesaid Act, which was registered as R. A. No. 520/(Ind) of 1993 for the assessment year 1985-86.

3. The application was, however, rejected on August 31, 1994. The applicant has, therefore, filed this application u/s 256(2) of the Income Tax Act, 1961.

4. We have heard Shri D.D. Vyas, learned counsel for the applicant, on the question of admission,

5. Shri D. D. Vyas submitted that the Tribunal erroneously upheld the order of the Deputy Commissioner of Income Tax (Appeals) and should have restored the order of the Assessing Officer. He placed reliance on Commissioner of Income Tax Vs. Indian Medicine (Sales House), and contended that the order of the Assessing Officer refusing continuation of the registration was legal and was required to be upheld. He, therefore, submitted that the Tribunal was not justified in refusing the application for reference.

6. While rejecting the application, the Tribunal noted that it was not a case of non-genuineness of the firm but a case of defective Form No. 12 and that the defect was curable and in fact was cured by furnishing fresh Form No. 12 signed by all the partners. The Tribunal concluded as under :

"The above finding of the Tribunal is based on facts available on record and on their appreciation. In the circumstances, we are of the opinion that the finding of the Tribunal does not give rise to a referable question of law. We, therefore, refuse to grant the reference."

7. In Brij Rattan Lal Bhoop Kishore Vs. Commissioner of Income Tax, , it is held as under (at page 725) :

"The Patna High Court in Alankar Jewellers Vs. Commissioner of Income Tax and Another, took the view that the defect may be either in the application for registration or in the documents which accompany the application. In either case it is mandatory on the part of the Income Tax Officer to intimate the firm to rectify the defect in the application for grant of registration and an opportunity should be given to the firm to rectify such defect.

Dealing with the 1922 Act, it was observed that u/s 26A of that Act, the Income Tax Officer would have been justified in refusing to grant registration if the application for registration was not accompanied by the original or a certified copy of the partnership deed but the position is different under the Act of 1961, because refusal to grant registration should be an exception under the Act of 1961, and it is for this reason that the Legislature has engrafted Section 185(2) in the 1961 Act. We respectfully agree with the view that an application for registration cannot be rejected simply because it is not in order. The Act enjoins that an assessee should be given an opportunity to rectify the defect in the application. If the application was nut personally signed by one of the members, the Income Tax Officer ought to have afforded an opportunity to the assessee-firm to rectify the defect. The same view was taken by that, court in Ganga Motor Service v. CIT [1977] 100 ITR 132."

8. In view of the factual matrix and the legal position, we are satisfied that the order of the Tribunal is based on appreciation of facts and does not give rise to a referable question of law. We are satisfied that the refusal by the Tribunal to refer the case is justified and does not call for any interference. We, thus, hold that no case is made out for making direction for reference us the aforesaid question does not arise for consideration.

9. In the result, we dismiss this application summarily without notice to the other side.

