(2005) 07 GUJ CK 0004

In the Gujarat High Court

Case No : IT Ref. No. 261 of 1993

Commissioner of Income Tax — APPELLANT

Vs

U.K. Textile — RESPONDENT

Date of Decision : 13-07-2005

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 184, 184(7), 185, 185(1)

Citation : (2005) 198 CTR 487

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Tanvish U. Bhatt, for the Appellant; None, for the Respondent

Judgement

D.A. Mehta, J.—The following question has been referred by the Tribunal, Ahmedabad Bench ''B'', under Section. 256(1) of the IT Act, 1961 (the Act), at the instance of the CIT :.

"Whether, the Tribunal is right in law and on facts, in setting aside the order made by the CIT under Section. 263 of the Act whereby he had directed the AO to consider the aspect of registration to the assessee-firm in view of the fact that the assessee-firm had not carried out any business activity and that it had only let out its building and machineries thereby earning lease rent only ?"

2. The assessment year is 1988-89. The assessee-firm was constituted for the purpose of carrying on business of job work of printing of cotton sarees. The assessee was assessed under Section. 143(1) of the Act. The Commissioner of Income Tax, Rajkot (CIT), took action under Section. 263 of the Act on the ground that though the firm was constituted for the purpose of carrying on business it had not carried on any business activity but let out building along with machineries and was earning lease rent. That enjoyment of lease rent does not amount to any business activity. He, therefore, proposed to treat the action of the AO in granting registration to the assessee-firm to be erroneous and prejudicial to the interests of the Revenue. After hearing the assessee''s

representative, he passed the following order :

"4. In the circumstances, the assessment made by the AO granting registration for the above year is set aside with a direction to frame the assessment de novo on the limited issue as stated above in view of the observations made by me above and after providing a reasonable opportunity to the assessee to state its case."

3. The assessee carried the matter in appeal before the Tribunal. The Tribunal allowed the appeal vide order dt. 3rd Sept., 1992 by holding as under:

"8. We are of the opinion that the argument of the learned Departmental Representative that the business should be also carried by the assessee under all circumstances, cannot be a good argument. The reason is under given circumstances in order to overcome temporary lull if the assessee gives the business to some third party, for a short time, who is experienced in the line of business that does not amount to cessation of business of partnership firm and on that ground alone the registration cannot be refused.

9. Even otherwise as reproduced above in para 6 on the basis of the Clause 4 of the partnership deed, the registration of the firms cannot be denied because ''the partnership shall be authorised to carry on any other legitimate business'' also including the handing over of the business and accepting the rent in turn.

10. In the result, for the reasons stated hereinabove, we set aside the order of the CIT and the order of the ITO is restored."

4. Heard Mr. Tanvish U. Bhatt, learned standing counsel for the applicant-Revenue. Though served, there is no appearance on behalf of the respondent-assessee.

5. For the reasons that follow hereinafter, the Court finds itself unable to answer the question and hence the reference is returned unanswered.

6. The CIT in his order states that the assessee-firm was not entitled to registration under Section. 185 of the Act. That the assessee-firm had not carried on the business of job work of printing sarees at any time and the factory premises along with plant and machinery were leased out. That income from lease rent is to be taxed under the head ''Income from other sources''.

7. As against that, the Tribunal records in its order that the firm was constituted on 20th Aug., 1981, consisting of five partners. The assessee is engaged in the business of dyeing and printing of cotton sarees. In the year 1982, the assessee-firm acquired land on lease and erected plant and machinery. Thereafter the Tribunal while recording the order of CIT in para No. 3 of its order states that according to CIT, the assessee is not entitled for continuation of registration under the Act. As already noticed the Tribunal states that the factory premises and plant and machinery were let out to overcome temporary lull in the business and there was no cessation of business.

8. In light of the conflicting findings of the CIT and the Tribunal coupled with the fact that the assessment year under consideration is 1988-89, it is not possible to state whether this was the year of registration or continuation of registration already granted in earlier year. The Tribunal has recorded that the firm was constituted on 20th Aug., 1981. Neither of the authorities have found as to what was the factual position since the date of constitution of the firm upto the year under consideration.

9. The scheme of the Act as regards registration of firms shows that the procedure of application for registration is laid down in Section 184 of the Act. Section 185(1)(a) of the Act permits the AO to grant registration in the event of the necessary formalities prescribed by the Act and the Rules having been complied with after finding that there was a genuine firm in existence. u/s 185(4) of the Act, once the registration is granted for any assessment year, the said registration continues and no further and fresh inquiry is called for. This becomes clear from Sub-section (7) of Section 184 of the Act.

10. As noticed hereinbefore neither CIT nor the Tribunal have taken the basic care to place on record relevant and material facts as to whether the firm was being registered for the first time or it was continuation of registration that was being disturbed. In case only continuation of registration was sought to be disturbed, by virtue of Section 184(7) of the Act such an exercise would not be permissible, unless and until, by following the procedure prescribed under Section. 186 of the Act registration granted for initial year is cancelled. In absence of these foundational facts it is not possible to state one way or the other and the Court is not in a position to answer the question.

11. As to whether an assessee can be said to have carried on business when business assets are let out is no longer res Integra and this Court has laid down the principles in the case of Commissioner of Income Tax Vs. New India Industries Ltd., . It was necessary for the Tribunal to have applied its mind to the aforesaid aspects before determining as to whether the letting out of the factory premises and plant and machinery was for the purpose of earning rent or was exploitation of commercial assets in the course of business.

12. In the result, the question is left unanswered. The reference is returned to the Tribunal to adjust its decision while deciding the appeal finally in accordance with the provisions of law and settled legal position.

13. The reference stands disposed of accordingly. There shall be no order as to costs.