
(1973) 12 GUJ CK 0011

In the Gujarat High Court

Case No : Income-tax Reference No. 43 of 1972

Commissioner of Income Tax, Gujarat

APPELLANT

Vs

Trinity Traders

RESPONDENT

Date of Decision : 06-12-1973

Acts Referred:

Income Tax Act, 1961 — Section 184, 184(7), 263, 264
Income Tax Rules, 1962 — Rule 24

Citation : (1974) 97 ITR 81

Hon'ble Judges : T.U. Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : K.H. Kaji and R.P. Bhatt, for the Appellant; J.P. Shah, for the Respondent

Judgement

T.U. Mehta, J.—The question which arises to be considered in this reference is whether a declaration made u/s 184(7) of the Income Tax

Act, 1961, before the expiry of the accounting period is a valid declaration in law. This question arises in the context of the following facts.

2. The respondent-assessee is a partnership firm. The question relates to the assessment of the assessee's income for the assessment year 1967-

68, the relevant accounting period being Samvat year 2022. It is an admitted position that the accounting period ended on 12th November, 1966.

3. For assessment year 1967-68 the assessee filed his return on August 19, 1968, along with a declaration u/s 184(7) of the Act. However, this

declaration was not signed by two of its partners, namely, Sajanben Zaverilal and Divyakant Zaverilal. The said declaration was, therefore,

defective. However, on April 16, 1969, the assessee filed a revised return along with the new declaration which was made on June 13, 1966, and

signed by all the partners including the above referred two partners, Sajanben Zaverilal and Divyakant Zaverilal. It is this declaration which is the

subject-matter of dispute in this reference. Along with this revised return and the new declaration dated June 13, 1966, the assessee submitted a

forwarding letter stating that this declaration was not traceable at the time when the original return was filed. The Income Tax Officer concerned

accepted this declaration dated June 13, 1966, and carried out the assessment of the assessee on the basis that it was a registered firm.

4. Subsequently, the Additional Commissioner of Income Tax called for and examined the record of the assessee. During the course of that

examination he noted that the declaration dated June 13, 1966, which was filed by the assessee on April 16, 1969, contained some corrections

showing that at two places the assessment year was changed from 1966-67 to 1967-68. However, at one place no such correction was made

with the result that at that place the assessment year was shown as 1966-67. The Additional Commissioner further found that this declaration was

meant for the assessment year 1966-67, but was utilised by the assessee for the assessment year 1967-68 by making the above corrections. It is

found that two of the partners of the assessee, whose names are already given above, had, by this time, approached the Additional Commissioner

u/s 264 of the Income Tax Act, 1961. They had made certain statements to the Commissioner, as a result of which the Commissioner's doubt as

regards the declaration dated June 13, 1966, was strengthened.

5. The Additional Commissioner thereafter called upon the assessee to show cause why the order of the Income Tax Officer treating the assessee

as a registered firm should not be cancelled u/s 263 of the Act in so far as it was prejudicial to the interests of the revenue. The assessee, however,

did not appear before the Commissioner but submitted a written reply.

6. The explanation of the assessee was that though it is true that the declaration was made on June 13, 1966, it is not true that it was meant for the

assessment year 1966-67. According to the assessee this declaration was made for the assessment year in question, i.e., 1967-68 but it could not

be filed with the original return, because, at that time, it was not traceable.

7. The commissioner was not satisfied with the assessee's explanation and, therefore, he came to the conclusion that the declaration dated June

13, 1966, filed by the assessee along with his revised return was not valid for two reasons :

(1) that the declaration was meant for the assessment year 1966-67; and

(2) it was a declaration which was made during the course of the accounting period and, therefore, could not have been validly made for the purpose of the assessment year 1967-68.

8. Ultimately the Commissioner cancelled the order of the Income Tax Officer treating the assessee as a registered firm for the assessment year in

question and directed the Income Tax Officer to charge tax on the total income of the assessee after treating it as an unregistered firm.

9. Being aggrieved by this order of the Commissioner, the assessee approached the Appellate Tribunal. The Appellate tribunal found that it was

not in dispute that the declaration in question was bearing the signatures of all the partners of the firm. The Tribunal further found that this

declaration was meant for assessment year 1967-68 as contended by the assessee, and not for assessment year 1966-67 as found by the

Commissioner. In view of these findings the Tribunal allowed the appeal of the assessee and set aside the order of the Commissioner.

10. Being aggrieved by the decision of the Tribunal the revenue has preferred this reference in which the Tribunal has referred the following

question for our opinion :

Whether, on the facts and in the circumstances of the case, the declaration in Form No. 12 stated to have been signed by all the partners on June

13, 1966, could be considered as a valid declaration for the purpose of section 184(7) in respect of the assessment year 1967-68?

11. On the face of it, the question which is framed above does not bring out the real controversy between the parties because, as stated above, so

far as the findings of facts are concerned, the Tribunal has recorded all these findings in favour of the assessee and in this reference these findings

cannot be disturbed. However, the decision of the Tribunal is challenged on behalf of the revenue on a question of law which is not very apparent

from the question referred to us. The point of law is that even if it is found that the declaration dated June 13, 1966, was signed by all the partners

and was meant for the assessment year 1967-68 the said declaration is not valid in law because it is made before the accounting period was over.

Shri Kaji who appeared on behalf of the revenue contended that, according to the provisions contained in section 184(7) of the Act as well as the relevant rule 24 read together with Form No. 12, such declarations are expected to be made only after the accounting period is over. Since, in the case, the declaration is made during the course of the accounting period, it is not a valid declaration as contemplated by law.

12. Before considering the merits of the points of law raised by Shri Kaji, it would be necessary to refer to the relevant provisions of the Act and the Rules relating thereto.

13. It is an admitted position that prior to the assessment year 1967-68, the assessee-firm had obtained registration. It is, therefore, sub-section (7)

of section 184 of the Act which is relevant to the facts of this case. According to sub-section (7) where registration is granted to any firm for any

assessment year, it shall have effect for every subsequent assessment year. Therefore, if once the registration is granted, the said registration would

be good even for subsequent years. But this proposition is qualified by the proviso which is in the following terms :

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.

14. This proviso shows that even if a firm is granted registration for an assessment year the said registration would be good for the subsequent

assessment year only if it furnishes the declaration to the effect that there was no change in the constitution of the firm or shares of the partners as

evidenced by an instrument of partnership, on the basis of which registration was originally granted. Under the circumstances, making of a

declaration contemplated by the above-quoted proviso is a sine qua non for the continuation of the registration for the subsequent year.

15. Part V of the Income Tax Rules, 1962, contains rules regarding registration of firms. Rule 24 which is relevant to the facts of this case is in the

following terms :

24. Declaration for continuation of registration. - The declaration to be furnished under sub-section (7) of section 184 shall be in Form No. 12

and shall be verified in the manner indicated therein and shall be signed by the person concerned in accordance with sub-rule (5) of rule 22.

16. This rule speaks of Form No. 12 which is in accordance with the following specimen :

To

The Income Tax Officer,

Re. : Assessment year 19..... 19.....

We, on behalf of..... declare that

(i) our firm was granted registration for the assessment year 19..... 19....., vide order dated... 19..... passed by the Income Tax Officer...., and

(ii) there has been no change in the constitution of the firm or the shares of the partners since the last day of the previous year relevant to the

assessment year 19..... 19..... [or to the date (... 19....) of dissolution of the firm].....

We further declare that the information given above is correct and complete.

17. The contents of the Form quoted above show that the firm which wants to continue its registration for the subsequent years is expected to

make a declaration that there has been no change in its constitution, or in the shares of the partners up to the last date of the previous year relevant

to the assessment year.

18. From these provisions it is quite evident that the declaration which is contemplated by section 184(7) of the Act is the declaration that up to the

last date of the accounting period the constitution of the firm and the shares of the partners have remained unchanged. The question, therefore, is

whether any such declaration could have been validly made by any of the partners of the firm before the accounting period was over. In this case

the declaration in question was made by the assessee on 13th June, 1966. The accounting period was over on 12th November, 1966, i.e., about 5

months after the declaration was made. It is, therefore, apparent that the assessee could not have made any declaration in the month of June about

the state of affairs which was to be found in the month of November. Obviously, therefore, this declaration is not one contemplated by sub-section

(7) of section 184.

19. Shri Shah, on behalf of the respondent-assessee, contended that if this view is taken it would be highly technical and not consistent with the spirit of section 184 of the Act. According to Shri Shah, if the declaration was found to be defective, the taxing authorities concerned should have given opportunity to the assessee to correct the defect but, if they have not preferred to do so, this court should ignore the technical defect of this type before shutting out the right of the assessee to get registration.

20. We find that the defect in question is not merely a technical one, because filing a declaration contemplated by sub-section (7) of section 184 is not a mere formality. Section 184 was introduced in the scheme of the Act with a view to avoid procedural tangles. A firm was enabled to continue its registration even for the subsequent years provided it was successful once in obtaining registration in a particular year. But this was made conditional on the making of a declaration that the constitution of the firm as well as the shares of its partners continued to remain the same as mentioned in the instrument of partnership, on the strength of which the original registration was given. Therefore, the right of a firm to continue its registration is made conditional upon a declaration of the type mentioned above. If no such declaration is made then it results in non-compliance with the provisions of the section itself. Under the circumstances the declaration which is made by the assessee in the middle of the accounting period is found to be no declaration at all. In other words, the Income Tax Officer concerned has carried out the assessment treating the assessee as a registered firm without any declaration. It is found that the Tribunal has not considered this aspect even though the Additional Commissioner who has taken action u/s 263 of the Act has sufficiently dealt with it in his order. Therefore, even without disturbing the finding of the facts recorded by the Tribunal, we find that the question which is referred to us should be answered in the negative. This reference is accordingly disposed of. The respondent-assessee shall bear the costs of the Commissioner.