
(1984) 02 BOM CK 0069

In the Bombay High Court

Case No : Income-tax Reference No. 15 of 1975

Dattatraya Gopal Shette

APPELLANT

Vs

Commissioner of Income Tax, Poona Range, Poona

RESPONDENT

Date of Decision : 24-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 184

Citation : (1984) 41 CTR 393 : (1984) 150 ITR 460 : (1985) 18 TAXMAN 434

Hon'ble Judges : Sujata V. Manohar, J;Kania, J

Bench : Division Bench

Judgement

Sujata V. Manohar, J.—This is a reference under s. 66(1) of the Indian I.T. Act, 1922, and it relates to the assessment year 1961-62.

2. The assessee-firm was constituted under a deed of partnership dated November 14, 1953. The partnership consisted of three partners, Shankar Dattatray, Sambha Dattatray and Baburao Nagnath. Two minors, Pramod Kumar and Vijaykumar, were admitted to the benefits of the partnership. For the assessment years prior to 1961-62, the assessee-firm was allowed registration by the ITO concerned.

3. For the relevant assessment year, the assessee-firm filed an application for renewal of registration. This application for renewal of registration was made under s. 26A of the Indian I.T. Act, 1922, and it was filed on June 21, 1961. It was signed by the three partners, Shankar Dattatray, Sambha Dattatray and Baburao Nagnath. It seems that during the relevant assessment year, Pramodkumar had become a major and had elected to become a partner of the assessee-firm. Hence, Pramodkumar was, on the date of the application, a partner of the assessee-firm. He had, however, not signed the application for renewal of registration. The application for registration was, therefore, defective. On the basis of that application the ITO renewed the registration of the assessee-firm.

4. Thereafter, the CIT issued a notice under s. 33B of the Indian I.T. Act, 1922, to the assessee-firm to show cause why the renewal of registration granted by the ITO should not be cancelled. After hearing the assessee, the CIT cancelled the renewal of registration and directed the ITO to treat the firm as an unregistered firm and collect taxes accordingly.

5. In the course of the hearing before the CIT, the assessee-firm filed another application for renewal of registration on December 4, 1963, signed by all the partners, including Pramodkumar, and requested the CIT to direct the Income Tax authorities to grant renewal of registration on the basis of that application. The CIT, however, declined to grant the request of the assessee on the ground that the application for renewal of registration dated December 4, 1963, was not effective, because the assessment had already been completed.

6. The assessee-firm filed an appeal before the Income Tax Appellate Tribunal. The assessee contended that it was only by mistake that the partner who became a major in the relevant accounting year had not signed the renewal application. In these circumstances, the CIT should not have taken the drastic step of cancelling the order of renewal of registration. The Tribunal however, upheld the order of the CIT.

7. The Tribunal has referred to us the following question of law under s. 66(1) of the Indian I.T. Act, 1922 :

"Whether, on the facts and in the circumstances of the case, the assessee-firm was entitled to obtain renewal of registration u/s 26A of the Indian Income Tax Act, 1922, for the assessment year 1961-62 ?"

8. Under s. 26A of the Indian I.T. Act, 1922, an application for registration of a partnership firm under the said Act is required to be made by such person or persons and at such times and containing such particulars as may be prescribed. Rules have been framed under the provisions of the Indian I.T. Act, 1922, in this connection. Rule 2 requires, inter alia, that an application for registration or renewal of registration of a partnership firm shall be signed by all the partners (not being minors). We are not concerned with the other requirements of that rule. As held by the Supreme Court in the case of Sri Ramamohan Motor Service Vs. Commissioner of Income Tax, Hyderabad, , before a person can claim the benefit of s. 26A, he must strictly comply with the requirements of that section. In view of sub-s(2) of that section, he is also required to comply with the requirements of the relevant rules. Hence, the assessee-firm's application for renewal of registration was required to be signed by all the partners.

"The Central Board of Revenue, however, has issued a circular dated April 11, 1955, being Circular No. 14(XL-35) of 1955. Under this circular it is stated as follows"

"1..... 2..... 3. Officers of the Department must not take advantage of the ignorance of an assessee as to his rights. It is one of their duties to assist a

taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, Officers should -

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4.... The following examples (which are by no means exhaustive) indicate the attitude which Officers should adopt :....

(d) Section 26A - The benefit to be obtained by registration should be explained in appropriate cases. Where an application for registration presented by a firm is found defective, the Officer should point out the defect to it and give it an opportunity to present a proper application

6. The intention of this Circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever be the legitimate tax, it must be assessed and must be collected. The purpose of this Circular is merely to emphasis that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

9. It is now well-settled that even if the contents of a circular may amount to a deviation on a point of law, a circular of the Central Board of Revenue which confers some benefit on the assessee is binding on all officers concerned with the execution of the I.T. Act; and they must carry out their duties in the light of the circular. In the present case, therefore, it was, in the first place, the duty of the ITO to have drawn the attention of the assessee-firm to the defect in the application for renewal of registration. The ITO, however, granted registration to the firm. In such a situation it was equally the duty of the CIT to have given an opportunity to the assessee-firm to remedy the defect in their application. The CIT, in view of this circular, clearly should not have cancelled the renewal of registration of the assessee-firm without giving an opportunity to the assessee-firm to remedy the defect in the application.

10. The attention of any of the officers concerned as well as of the Tribunal does not appear to have been drawn to this circular. We have no doubt that had the circular been pointed out to the CIT or to the Tribunal, the directions contained in the circular would have been carried out.

11. In view of this circular, it would be academic to answer the questions of law raised before us. We, therefore, decline to answer the question and send the matter back to the Tribunal so that the Tribunal may examine the matter in the light of the circular and in the light of our observations and may give such suitable directions as the Tribunal may deem fit.

12. In taking the course that we have taken in this matter, we are supported by a decision of the Gujarat High Court in the case of Commissioner of Income Tax, Gujarat-I Vs. Ahmedabad Keiser-e-hind Mills Co. Ltd., , where, in the light of the same circular in a somewhat similar situation, the Gujarat High Court declined to answer the question and referred the matter to the Tribunal.

13. There will be no order as to costs.