(1990) 09 OHC CK 0013

In the Orissa High Court

Case No : S.J.C. No. 49 of 1979

Dayaram Co.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:
Income Tax Act, 1961 — Section 184, 184(4), 184(7), 185, 185(3)

Citation : (1990) 09 OHC CK 0013

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : B.K. Mohanti, P.K. Misra, R.L. Bose and S.P. Choudhury, for the Appellant; S.C. Ray, Advocate-General and Standing Counsel, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). A statement of case has been made to this court having been called for on the following question of law:

"Whether, on the facts and in the circumstances of the case, the view taken by the learned Tribunal that the appeal before the Assistant Commissioner is not maintainable against an order passed u/s 184(4) of the Act is correct?"

2. The assessee is a partnership firm which was getting the benefit of registration in earlier years. In respect of the year 1976-77, there was reconstitution of the firm. When the Assessing Officer proceeded to complete the assessment of the firm, it found that the assessee has not applied for fresh registration as required u/s 184(8) of the Act for getting the benefit of registration. When this was confronted to the assessee, it filed a memorandum submitting that there has been a change in the constitution of the firm for the assessment year 1976-77 and two new partners have been admitted by a deed of partnership duly executed by all the partners with effect from October 1, 1974. Intimation has been given to various authorities including the Income Tax Department in the month of October, 1974, itself. This fact has also been published in the bulletin of Ganjam Chamber of Commerce. The partnership deed in original along with Form

No. 11A was filed in due time for its registration by its previous authorised representative. Since the same was not available on the record, to complete the record, the assessee filed a duplicate copy of the deed along with a true copy of Form No. 11A duly signed by all the partners. The Income Tax Officer was not satisfied that the original deed together with Form No. 11A had been filed by the previous tax advisor of the asses see-firm. The Assessing Officer did not accept the duplicate copy as an application u/s 184 of the Act. Accordingly, he treated the assessee as an unregistered firm since the application was not filed in time as required u/s 184(4). To this effect, an order was passed on January 20, 1977, which was described by the Income Tax Officer to be one u/s 185 of the Act, the assessee preferred an appeal against the order before the Appellate Assistant Commissioner who agreed with the Income Tax Officer that the application in Form No. 11A was not filed and a duplicate was filed by the assessee beyond the period allowed u/s 184(4) and, even accepting the duplicate to be an application as required under the Act. The Appellate Assistant Commissioner held that there is no material to be satisfied that the firm was prevented by sufficient cause from making an application before the end of the previous year as required u/s 184(4) of the Act. On this finding, the appeal having been dismissed, the assessee preferred a second appeal before the Income Tax Appellate Tribunal. On behalf of the Revenue, it was urged that the appeal before the Appellate Assistant Commissioner was not maintainable. The Tribunal, relying upon the decision reported in New Orissa Traders Vs. Commissioner of Income Tax, , accepted the contention of the Revenue and dismissed the appeal. The assessee filed an application u/s 256(1) of the Act which was rejected on the ground that the question of law raised has already been concluded by a decision of this court and as such no referable question of law can be said to arise. An application was filed in this court u/s 256(2) of the Act where a statement of case was called for on the question extracted earlier.

3. In New Orissa Traders Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. Pohop Singh Rice Mill, and in S. J. C. No. 65 of 1982 decided on 12.9.1990, B.J. Bhambhani Vs. Commissioner of Income Tax, , this court has held that no appeal lies against an order expressing not to accept a declaration furnished u/s 184(7) of the Act beyond the period allowed without sufficient cause since the same is not one u/s 185(3) of the Act. Refusal to accept a duplicate copy of an application in Form No. 11A as an application u/s 184(4) read with Section 184(7) of the Act in an order describing it as one u/s 185(3) of the Act is not such an order and the assessee has no right of appeal against such an order u/s 246(1)(j) of the Act.

4. In view of the discussion made above, the question is answered in the affirmative against the assessee. There shall be no order as to costs.

J. M. Mahapatra, J.

5. I agree.

