

(1974) 07 OHC CK 0015
In the Orissa High Court
Case No : S.J.C. No. 73 of 1973

Dilsukhari Ranglal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-07-1974

Acts Referred:

Income Tax Act, 1961 — Section 184(7)

Citation : (1976) 102 ITR 641

Hon'ble Judges : G.K. Misra, C.J.; B.K. Ray, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; A.B. Misra, for the Respondent

Judgement

G.K. Misra, C.J.—Undisputed facts are that the assessee was granted registration u/s 26A of the Indian Income Tax Act, 1922 (hereinafter to be referred to as "the old Act"), till the assessment year 1961-62. It did not file its returns for the accounting year ending in Diwali on October 19, 1961, u/s 139 (1) or (4) of the Income Tax Act, 1961 (hereinafter to be referred to as "the new Act"). Best judgment assessment was completed u/s 144 of the new Act for the assessment year 1962-63. The status of the assessee was determined as an "unregistered firm". The assessee filed a declaration u/s 184(7) of the new Act in Form No. 12 on June 28, 1962. The due date for filing of return of income was June 30, 1962. No return was, however, filed. The new Act came into force on April 1, 1962.

2. The assessee's stand was that the firm being registered up to and including the assessment year 1961-62, it was required only to file a declaration in Form No. 12 u/s 184(7) and the assessee having filed such a declaration the Income Tax Officer was not correct in treating the status as an "unregistered firm" by cancelling the registration even though he made the assessment for the assessment year 1962-63 u/s 144 of the new Act for non-filing of the return.

3. The stand taken by the revenue was that the declaration u/s 184(7) is of no avail unless the assessee was first granted registration under the new Act. The

assessee not having been registered under the new Act the declaration by itself would not confer the status of a registered firm. Further, the assessee not having filed the return, the declaration is of no avail and the Income Tax Officer was justified in taking the status as an "unregistered firm".

4. Against the order of the Income Tax Officer completing the assessment u/s 144 the assessee filed an appeal u/s 246(c) of the new Act before the Appellate Assistant Commissioner challenging the status. The appeal was dismissed. The Income Tax Appellate Tribunal in second appeal remanded the case as evidence of filing of declaration u/s 184(7) was produced. The Appellate Assistant Commissioner after remand by his order dated March 31, 1970, allowed the appeal and directed the Income Tax Officer to register the firm.

5. The revenue carried a second appeal and advanced the following contentions :

(i) The appeals against quantum challenging assessment and refusal of the Income Tax Officer to allow registration were two distinct and separate matters. The Appellate Assistant Commissioner exceeded his jurisdiction in dealing with registration while disposing of an appeal filed against quantum.

(ii) There being no application by the assessee for registration no registration could be granted.

(iii) The assessee not having filed return the declaration dated June 28, 1962, cannot be utilised for continuance of registration and the declaration was not valid in law.

6. The Income Tax Appellate Tribunal held that as no registration had been granted u/s 184 of the new Act the question of granting continuance of the registration u/s 184(7) does not arise. The Tribunal did not go into the question as to whether the declaration is valid without it being filed along with the return.

7. At the instance of the assessee the reference has been made u/s 256(1) of the new Act and the following question of law has been referred :

" Whether, in the facts and circumstances of the case, the Tribunal was justified in holding that the declaration filed by the assessee u/s 184(7) of the Income Tax Act, 1961, for the assessment year 1962-63, claiming continuance of registration for that year is of no avail, and as there has been no application for registration in accordance with Section 184 of the Income Tax Act, 1961, claiming registration, the status of the assessee has to be correctly taken as "unregistered firm" ? "

8. The question referred is in two parts. The first part is whether the Tribunal was justified in holding that the declaration filed by the assessee u/s 184(7) for the assessment year 1962-63, claiming continuance of registration is of no avail as no return was filed for the assessment year 1962-63. It is to be noted that the Tribunal did not deal with this matter and this part of the question should not have been so framed.

9. Section 184(7) as it stood during the relevant period prior to its amendment in 1970 runs thus:

" Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year :

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. "

9. It would be noticed that once registration is granted to any firm for any assessment year it shall have effect for every subsequent assessment year if the conditions prescribed in the proviso are fulfilled. By the second proviso one essential condition is that the firm would furnish the declaration in the prescribed form which is Form No. 12 along with its return of income for the assessment year concerned. Admittedly, in this case no return was filed and only the declaration was given. The second proviso was thus contravened. As the declaration was not filed along with the return the registration that was granted to the assessee till the assessment year 1961-62 under the old Act shall have no effect for the assessment year 1962-63. The language of the section is plain and admits of no different construction. Our view is supported by two Bench decisions of the Mysore High Court in *Madivalappa and Sons Vs. Commissioner of Income Tax, Mysore*, and *J. Subba Rao and Sons Vs. Commissioner of Income Tax, Mysore*, . Mr. Mohanty placed reliance on a Bench decision of the Allahabad High Court in *Nand Singh Taneja and Sons Vs. Commissioner of Income Tax*, . On the analysis given by us we are unable, with respect, to accept the Allahabad case as laying down the correct law.

10. On the aforesaid conclusion, we are clearly of opinion that the declaration filed on June 28, 1962, is of no avail to the assessee as it did not file the return of income and as such the declaration was not filed with the return. The decision of the Tribunal can be supported on this ground and it is not necessary to answer the second part of the question.

11. We would accordingly reframe the question as follows:

" Whether, in the facts and circumstances of the case, the declaration filed by the assessee u/s 184(7) of the Income Tax Act, 1961, for the assessment year 1962-63 claiming continuance of registration for that year is of any avail when it was not filed along with the return of income? "

12. We would answer the question in the negative by saying that, in the facts and circumstances, the declaration u/s 184(7) is of no avail.

13. In the result, the reference is discharged ; but, in the circumstances, there will be no order as to costs.

B.K. Ray, J.

14. I agree.