(1995) 05 DEL CK 0040

In the Delhi High Court

Case No : Income-tax Reference No. 57 of 1978

Eastern Insulation Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 16-05-1995

Acts Referred:

Citation : (1995) 215 ITR 130 : (1995) 82 TAXMAN 460

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Rajendra, for the Respondent

Judgement

Dr. M.K. Sharma, J.—In the present reference, the following question of law has been referred to this court u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessed for the assessment year 1971-72 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Appellate Assistant Commissioner was wrong in entertaining the assessor''s appeal against the Income Tax Officer''s order u/s 184(7) and in directing him to condone the delay in the filing of the application and also to grant continuation of registration to the assessee-firm ? "

2. For the assessment year 1971-72, the assessed filed an application before the Income Tax Officer u/s 184(7) of the Income Tax Act in Form No. 12 seeking continuation of registration. This application was filed by the assessed on October 10, 1971, although the due date for filing the same expired on September 30, 1971. The Income Tax Officer called upon the assessed to explain why the application was not filed within time. The assessee, as against the same, explained that Form No. 12 which is the prescribed form of application u/s 184(7) of the Act was sent to Bombay for the signature of one of the partners and as it was not returned by that partner within time, the assessed could not file the application within the prescribed time. The Income Tax Officer, however, held that the assessed has failed without reasonable cause to file the application

for renewal of registration within the statutory time-limit observing that the assessed had not placed before him any evidence and, accordingly, he refused to continue registration for the assessment year 1971-72. The assessed filed an appeal before the Appellate Assistant Commissioner, who upon verification of the facts of the case, directed the Income Tax Officer to condone the delay and to grant the assessed continuation of registration for the year 1971-72. Against the above order of the Appellate Assistant Commissioner, the Revenue filed an appeal before the Tribunal. The Tribunal, after perusal of the records and hearing the parties, held that the Appellate Assistant Commissioner was wrong in entertaining the assessor''s appeal and also in directing the Income Tax Officer to condone the delay u/s 184(7) of the Act and to grant registration to the firm. Hence, the present reference on the basis of the application u/s 256(1) of the Income Tax Act at the instance of the assessee.

3. Learned counsel appearing for the Revenue submitted before us that there has been a divergent opinion in respect of the issue involved in the present reference. It has also been brought to our notice that the Supreme Court in the case of CIT v. Ashoka Engineering Co. : [1992]194ITR645(SC) has now set at rest the controversy with regard to the issue. In the aforesaid decision, the Supreme Court has held that an appeal is maintainable from an order rejecting an application for registration or declaration for continuation of registration filed beyond time on the ground that there was no sufficient cause preventing its being filed within time. Following the ratio of the aforesaid decision of the Supreme Court in Ashoka Engineering Co.''s case : [1992]194ITR645(SC) , we answer the question referred to us in the negative in favor of the assessed and against the Revenue. This petition is disposed of.

