(1996) 06 GAU CK 0027

In the Gauhati High Court

Case No : Income-tax Reference No. 29 of 1990

Frontier Construction APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:
Income Tax Act, 1961 — Section 186, 186(1)

Citation : (1997) 140 CTR 75 : (1996) 221 ITR 878 : (1997) 90 TAXMAN 453

Hon'ble Judges : Sujit Barman Roy, J;D.N. Baruah, J

Bench : Division Bench

Advocate : A.K. Saraf and K.K. Gupta, for the Appellant; U. Bhuyan, for the Respondent

Judgement

D.N. Baruah, J.—In this reference u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act"), the following two questions have been referred at the instance of the assessee for opinion of this court :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the cancellation of registration u/s 186(1) of the Income Tax Act, 1961, for all the four years ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that for non-production of all the partners, the Income Tax Officer had no means to ascertain the existence of a genuine firm and, therefore, was right in cancelling the registration allowed ?"

2. The assessee is a firm registered under the Partnership Act. For the assessment years 1979-80, 1980-81, 1981-82 and 1982-83, the Income Tax Officer passed orders u/s 186(1) of the Act. He found that the firm was allowed registration earlier with eight partners as named in the order passed by the Income Tax Officer. On August 30, 1985, the Income Tax Officer visited the premises of the firm and among other things he found that the signatures of the three partners recorded at the time of the search materially varied with the

signatures given in the application form and papers filed by the firm. The Income Tax Officer asked the assessee to show cause why registration should not be cancelled. On this ground the Income Tax Officer asked the assessee to produce all the partners for examination. Only two partners, namely, Ajit Barkataky and Jiten Nath, were produced for examination and their signatures were taken. The Income Tax Officer, therefore, came to the conclusion that the firm was not genuine. As such the registration of the firm which was allowed earlier by order dated March 20, 1982, was cancelled after obtaining the approval of the Inspecting Assistant Commissioner. The Income Tax Officer also observed that the cancellation order would have effect for the assessment years 1979-80, 1980-81, 1981-82 and 1982-83.

3. Being aggrieved, the assessee preferred an appeal before the Appellate Assistant Commissioner and the Income Tax Officer also brought to the notice of the Appellate Assistant Commissioner that he passed the order u/s 158 in the facts and circumstances mentioned above. According to the Appellate Assistant Commissioner, the assessee could not explain the reason for non-production of the partners for examination before the Income Tax Officer and in the opinion of the Appellate Assistant Commissioner, this was a sufficient ground for cancellation of the registration and the appeals were dismissed.

4. The assessee-firm preferred further appeal before the Income Tax Appellate Tribunal, The contention of the assessee before the Income Tax Appellate Tribunal was that the firm had been found to be genuine and in existence before the Income Tax Officer had allowed registration earlier vide order dated March 20, 1982. The signatures of the persons after a long time might vary. Some other submissions had also been made before the Appellate Tribunal. The Appellate Tribunal, however, found that the difference in the signature was not the ground for cancellation of registration as the Income Tax Officer found that the assessee was unable to produce the other partners before him for examination. The Appellate Tribunal came to the conclusion that the Income Tax Officer was justified on the facts of the case in cancelling the registration of the firm.

5. The assessee requested the Tribunal to refer the aforesaid two questions for opinion of this court. Hence, the present reference.

6. We have heard Dr. A. K. Saraf, learned counsel for the assessee, and Mr. U. Bhuyan, learned junior standing counsel for the Revenue.

7. Dr. Saraf submits that it is true that the registration was earlier granted by the Income Tax Officer. But subsequently, it was cancelled due to failure of the assessee to produce all the partners. He also submits that in subsequent years, the same firm was registered by the Income Tax Officer and, therefore, from this very fact it was sufficient to indicate that the firm was genuine at that time. In the subsequent years, the partners were produced before the Income Tax Officer and because of this it cannot be presumed that in the concerned period of

assessment also the firm was genuine with those partners. However, Mr. Bhuyan disputed the submission made by Dr. Saraf. According to him, in the subsequent assessment year also, the registration was refused. Dr. Saraf also submits that while answering, the question this court may take note of subsequent events, that is, the partners appeared in the subsequent assessment years. It is true that subsequent events can be taken into consideration ; but the subsequent events are not on record.

8. We have gone through the paper book. The submission of Dr. Saraf regarding the subsequent registration and also the submission of Mr. Bhuyan that the registration was refused, we do not find anything on the record. In the absence of anything on the record it will be difficult for us to hold that subsequently the firm was registered on production of the partners. Equally, it will be difficult for this court to hold that it was also rejected. u/s 186 of the Act, if where a firm has been registered, or its registration has effect under Sub-section (7) of Section 184 for an assessment year, the Income Tax Officer is of opinion that there was during the previous year no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard and with the previous approval of the Inspecting Assistant Commissioner, cancel the registration of the firm for that assessment year.

9. In this case, the Income Tax Officer doubted the genuineness of the signature and asked the assessee-firm to produce the partners to enable him to verify about the genuineness of the firm. However, the assessee-firm failed to produce the partners. The difference of signatures was not the ground for cancellation of registration of the firm; but for the non-production of all the partners.

10. We have gone through the judgment of the Tribunal. The Tribunal held that the cancellation of registration was not on the sole ground of difference in the signatures, but on the ground of failure of the assessee-firm to produce the partners. It is the statutory obligation and the duty of the Income Tax Officer to see whether the firm is genuine or not before registration of the firm. The Income Tax Officer cannot allow registration of a firm which is not genuine. The Income Tax Officer in this case discharged his obligation by asking the assessee to produce all the partners. He was also right in holding that there would be no difficulty to produce the partners. From the record, we do not find that the partners appeared in the subsequent years. It is also not indicated for what reason the assessee failed to produce the partners. In view of that, we are of the opinion that the Income Tax Officer had rightly cancelled the registration and the Tribunal was also right in upholding the decision of the Income Tax Officer.

11. In view of the above, we answer the questions in the affirmative in favour of the Revenue and against the assessee.

12. A copy of this judgment under the signature of the Registrar and the seal of the High Court shall be transmitted to the Income Tax Appellate Tribunal.

