(1978) 08 AHC CK 0025

In the Allahabad High Court

Case No : Income-tax Reference No. 161 of 1976

Income Tax Officer APPELLANT

Vs

Vinod Krishna Som Prakash RESPONDENT

Date of Decision : 23-08-1978

Acts Referred:
Income Tax Act, 1961 — Section 143, 246

Citation : (1979) 117 ITR 594

Hon'ble Judges : Satish Chandra, C.J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; A.N. Mahajan and M.C. Pant, for the Respondent

Judgement

Satish Chandra, C.J.—The assessee is a firm. It carries on the business of bricklin. For the assessment year 1970-71, it was granted registration under the I.T. Act. For the next year, namely, 1971-72, it filed the declaration in Form No. 12, for renewal of registration on 7th August, 1971. The previous year ended on 10th June, 1961. The assessee filed an application for condonation of the delay of one month and six days on the ground that it was under the bona fide impression that the declaration could be filed along with the return. The ITO held that ignorance of law was no excuse. He refused to condone the delay. He treated the assessee as an unregistered firm and assessed it in that status.

2. On appeal, it was held that the assessee had shown sufficient cause for the delay. It should have been condoned. The status of the firm was taken as that of a registered firm.

3. The ITO went up to the Tribunal on the question of status of the assessee. On behalf of the revenue, it was submitted that no appeal lay against the ITO''s order refusing to condone the delay in filing the declaration. Such an order is passed u/s 184(7) of the Act against which no appeal has been provided u/s 246 of the Act.

4. Reliance was placed upon A.S.S.S.S. Chandrasekaran and Brothers Vs. The Commissioner of Income Tax, Madras, a decision of the Madras High Court, in which it was held that such an appeal was not competent.

5. The Tribunal preferred to base its decision on the judgment of the Gujarat High Court in Commissioner of Income Tax, Gujrat Vs. Dineschandra Industries, and held that an appeal lay u/s 246(j) of the Act. The Tribunal drew support from the Supreme Court decisions in Mela Ram and Sons Vs. The Commissioner of Income Tax Punjab, and SIR HUKUMCHAND AND MANNALAL CO. Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH, NAGPUR AND BHANDARA., . These Supreme Court decisions were rendered under the Act of 1922. The Tribunal held that they were helpful in construing the provisions of the Act of 1961. The appeal filed by the revenue was dismissed.

6. At the instance of the revenue, the Tribunal has referred the following question of law for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that an appeal against the refusal of the Income Tax Officer to condone the delay in filing the application for registration lies to the Appellate Assistant Commissioner u/s 246(j) of the Income Tax Act, 1961 ?"

7. We have heard learned counsel and gone through the decisions of the Madras and Gujarat High Courts. We are inclined to agree with the view taken in the Gujarat case, which has also been taken by a Division Bench of the Andhra Pradesh High Court in Additional Commissioner of Income Tax Vs. Chekka Ayyanna and Others, .

8. For the reasons mentioned in that decision, we are of the view that, under the circumstances, an appeal lay u/s 246(j) of the Act.

9. The question whether an order refusing to condone the delay in filing the declaration is appealable can be considered from another view-point.

10. Section 246 is in Chapter XX dealing with appeals and revisions. It authorises the assessee to appeal against the order of the ITO specified in the various Clauses (a) to (o). Clause (c) of Section 246 provides :

"(c) An order against the assessee where the assessee denies his liability to be assessed under this Act.....or to the status under which he is assessed."

11. The Explanation appended to this section says :

"Explanation.--''Status'' means the category under which the assessee is assessed as '' individual'', ''Hindu undivided family'' and so on."

12. If there is a dispute as to the status under which an assessee is assessed, the order relating to it is appealable under Clause (c). Status means the category under which the assessment is made. The Explanation illustrates the categories as "individual", "Hindu undivided family" and so on. A firm is included in the

definition of "person" in Section 2(31) of the Act. Section 2(31) provides:

"(31) ''Person'' includes-

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses."

13. Learned counsel for the revenue stressed that a firm, whether registered or unregistered, is a "person". The use of the word "status" in Clause (c) to Section 246 read with this Explanation refers to assessment in the capacity of one or the other of the category of persons mentioned in Clause (31) of s, 2. It does not include within its ambit the sub-classification of a category. It refers to a firm as a category. It does not include an unregistered firm and a registered firm, as separate categories.

14. This argument is completely answered by the second Explanation appended to Section 143 of the Act. Section 143 provides for assessment. The second Explanation says :

"Explanation 2.--''Status'', in relation to an assessee, means the classification of the assessee as an individual, a Hindu undivided family, or any other category of persons referred to in Clause (31) of Section 2, and where the assessee is a firm, its classification as a registered firm or an unregistered firm."

15. It is clear that the assessment of a firm as a registered firm or as an unregistered firm is a matter of status, and a dispute that a firm was entitled to be assessed as a registered firm and not as an unregistered one is a dispute relating to the status in which the assessee-firm is liable to be assessed. It is clearly within the ambit of Clause (c) of Section 246 of the Act.

16. The effect of the ITO''s order refusing to condone the delay in the filing of the declaration in Form No. 12 is refusal to assess the firm as a registered firm. If the assessee claims that it was not liable to be assessed as an unregistered firm but was entitled to be assessed as a registered firm, the claim relates to the status under which the assessee is assessed within the meaning of Clause (c) aforesaid. The assessment order itself could be appealed against on the ground that the assessee was assessed in a wrong status. Since the main reason was the refusal to condone the delay which led to the assessment as an unregistered

firm, the same could be questioned in an appeal under Clause (c). The order refusing to condone the delay was hence appealable to the AAC under Clause (c) as well.

17. We, therefore, answer the question referred to us in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to costs which are assessed at Rs. 200.