(1975) 11 CAL CK 0006

In the Calcutta High Court

Case No : Income-tax Reference No. 653 of 1972

Indo Traders APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-11-1975

Acts Referred:
Income Tax Act, 1961 — Section 184(1), 184(7)

Citation : (1978) 111 ITR 355

Hon'ble Judges : S.C. Deb, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : P.K. Mullick and A. Mukherjee, for the Appellant;S.C. Sen and A. Mitter, for the Respondent

Judgement

Deb, J.—The following question is involved in this reference u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the declaration made by the assessee under the provisions of Section 184(7) on February 11, 1964, when the return of income for the assessment year 1963-64 had been filed on January 25, 1964, was not within the time permitted under the statute and whether the Tribunal was further right in holding that the assessee was not entitled to claim the relaxation permitted under the Central Board of Direct Taxes Circular No. 3P (XXV-22 of 1964) dated July 29, 1964 ?"

2. The assessment year is 1963-64. The assessee is a firm. An application for registration was made in the assessment year 1962-63. During the pendency of the said application the firm filed its return of income on January 25, 1964, for the assessment year 1963-64. Thereafter, on February 2, 1964, the firm furnished the declaration u/s 184(7)(ii) of the Income Tax Act, 1961.

3. On July 29, 1964, the Central Board of Direct Taxes issued the above circular. On July 7, 1966, the application for registration of the firm for the assessment

year 1962-63 was rejected. Accordingly, the Income Tax Officer has rejected the firm''s application, u/s 184(7) of the Act, for renewal of registration for the assessment year 1963-64. This order was made by the Income Tax Officer in 1968, and it has been set aside on appeal by the Appellate Assistant Commissioner, but the Appellate Tribunal has allowed the appeal filed by the department and has restored the order of the Income Tax Officer.

4. Mr. P. K. Mullick, the learned counsel for the assessee, has urged before us that the Tribunal should have granted registration u/s 184(1), read with the proviso to Section 184(4) of the Act by treating the said declaration furnished by the assessee u/s 184(7)(ii) of the Act as an original application for registration of the firm. It is his submission that Section 184(7)(ii) of the Act does not prescribe any time for furnishing the declaration and the filing of the said declaration along with the return is not mandatory under the said circular. He has also submitted that, instead of rejecting the firm''s application u/s 184(7) of the Act, the Income Tax Officer should have given the firm an opportunity to make an application for registration in terms of the said circular.

5. In support of his first contention, he has urged that it was not necessary for the firm to comply strictly with Section 184 of the Act in view of the observations made by the learned judges of the Allahabad High Court in the case of Kanhaiya Lal Moti Lal Vs. Commissioner of Income Tax, , but the said observation is an obiter and, that apart, with due respect to their Lordships, we are not impressed by it in view of the decision of the Supreme Court in the case of Sri Ramamohan Motor Service Vs. Commissioner of Income Tax, Hyderabad, .

6. We are of the opinion that a declaration furnished u/s 184(7)(ii) of the Act cannot be treated as an application u/s 184(1) of the Act. An application u/s 184(1) of the Act can be made only when the firm has not been registered in the earlier year. u/s 184(4) of the Act such an application must be made before the end of the previous year for the assessment year in respect of which the registration is sought. Proviso to Section 184(4) confers a discretionary power on the Income Tax Officer to entertain an application for registration if made after the end of the previous year provided he is satisfied that the firm was prevented by sufficient cause from making the said application before the end of the previous year. Now, Section 184(7)(ii) of the Act reads as follows :

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

Provided that--.....

(ii) the firm furnishes, along with its return of income for the assess ment year concerned, a declaration to that effect, in the prescribed form and verified in the prescribed manner."

7. As already stated, the application for registration of the firm for the assessment year 1962-63 was rejected in 1966. Therefore, no registration was

granted to the firm in that year. Hence, Section 184(7) of the Act cannot apply in the facts and circumstances of the case. That apart, in order to enjoy the benefit of an earlier registration in a subsequent assessment year, it is incumbent on the firm to furnish, along with its return of income for the assessment year concerned, a declaration in the prescribed form, which has not been done in this case.

8. There are two prescribed forms u/s 184(1) of the Act for registration of firms and those forms are Form Nos. 11 and 11A. On the other hand, the prescribed form u/s 184(7) is Form No. 12. None of the particulars set forth in the Forms Nos. 11 and 11A are included in Form No. 12. Therefore, a declaration u/s 184(7)(ii) cannot be treated or construed as an application for registration u/s 184(1) of the Act.

9. Further, Section 184(7) of the Act cannot apply in a case where an application u/s 184(1) of the Act is pending. In such a case an application u/s 184(1) has to be made for registration of the firm in the subsequent assessment year. If no such application is made and only a declaration is furnished along with the return u/s 184(7)(ii) it cannot be entertained under the Act.

10. To obviate these difficulties the above circular was issued by the Central Board of Direct Taxes, which, inter alia, read as follows :

".....If, for any reason, the application for registration is rejected after the firm has filed declaration for continuation of registration for a later year, he (ITO) should, instead of rejecting the declaration as incompetent, allow the partners of the firm concerned an opportunity of filing an application for registration within a reasonable time, say, one month, provided the declaration for the continuation of registration for that year was filed in time." (Words in brackets supplied).

11. The circular has empowered the Income Tax Officer to give an opportunity to a firm to make an application for registration within a reasonable time provided a declaration for the continuation of registration for that year has been filed by the firm "in time". The time to furnish or file such declaration is the time when the firm files its return of income for the assessment year concerned in view of the expression "along with its return of income for the assessment year concerned" used in Section 184(7)(ii) of the Act. The words "in time" used in the circular, in our opinion, refer to the aforesaid time prescribed in Section 184(7)(ii) of the Act.

12. The Income Tax Officer has no power to extend the time fixed by Section 184(7)(ii) of the Act which enjoins the firm to furnish a declaration along with its return of income for the assessment year concerned. The furnishing of the said declaration along with the said return, in our opinion, is mandatory. The Income Tax Officer must act in terms of the circular and he has no power under the circular to give an opportunity to the firm to make an application for registration, for the firm has not furnished the said declaration along with its return of income for the assessment year concerned.

13. In this view of the matter, the contentions of Mr. Mullick must fail and we return our answer to the question in the affirmative and against the assessee.

14. Having considered the facts and circumstances of the case, we do not propose to make any order as to costs.

Dipak Kumar Sen, J.

14. I agree.

