
(1980) 07 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : IT Reference No. 120 of 1975 & Income-tax Reference No. 120 of 1975

Jagdish Ram Shankar Dass

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-07-1980

Acts Referred:

Income Tax Act, 1961 — Section 184(4), 184(7)

Citation : (1981) 5 TAXMAN 80

Hon'ble Judges : M.R. Sharma, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : L.K. Sud, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

B.S. Dhillon, J.—The following questions of law have been referred to this court for its opinion at the instance of the assessee: (i) Whether the grant of one month's time under the Circular No. 3P (XXV)-22 of 1964 dated July. 29, 1964, issued by the Central Board of Direct Taxes for filing an application for registration automatically: condones the delay which has already occurred in filing the application?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the income tax Officer was justified in not condoning the delay of 8 years in filing the application for registration for the assessment year 1959-60?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the refusal of registration to the assessee-firm for the assessment year 1959-60?

The brief facts giving rise to this reference are that on July 9, 1957, Shri. J.H. Jain and Shri Shankar Dass Jain entered into a partnership to carry on business in cloth in the name and style of M/s. Jagdish Ram Shankar Dass. For the

assessment year 1958-59, relevant to the accounting period ending on 31st March, 1958, this firm applied for registration on December 11, 1967. The ITO rejected this application on March 3, 1970, on the ground that the same was out of time by more than 9 years.

2. For the assessment year 1959-60 relevant to the accounting period ending on March 31, 1959, the return of the income of the assessee, though dated October 18, 1967, was filed on December 15, 1967. Along with the return, the assessee filed a declaration in Form No. 12 for the continuation of registration u/s 184(7) of the income tax Act, 1961 (hereinafter referred to as "the Act"). The declaration did not bear any date. By his order dated March 5, 1970, the ITO rejected this application for the continuation of registration on the ground that no registration had been granted to the assessee-firm for the assessment year 1958-59. The ITO also did not agree with the prayer of the assessee that the firm be given one month's time to file an application for registration for the assessment year 1959-60 in accordance with the Circular No. 3/P (XXV)-22 dated July 29, 1964, issued by the CBDT.

3. On appeal against the order dated March 5, 1970, of the ITO for the assessment year 1959-60, the AAC, vide his order dated May 19, 1970, held that the ITO had committed a mistake in not giving effect to the orders of the CBDT as contained in the aforesaid circular. He, therefore, set aside the order of the ITO with a direction that the ITO should allow one month's time to the assessee for filing the application for registration for the assessment year 1959-60 and then to determine its status in accordance with law.

4. In pursuance of the order dated May 19, 1970, of the AAC, the ITO allowed the assessee-firm one month's time to file an application for registration for the assessment year 1959-60 and the assessee submitted this application on August 25, 1970. The ITO called upon the assessee to explain the delay for not filing this application before the end of the previous year relevant to the assessment year 1959-60, as required u/s 184(4) of the Act. The assessee was unable to give any explanation for the delay of 9 years in filing the application. It was contended that the grant of time, under the circular referred to above, automatically condoned the delay in filing the application for registration. The ITO did not accept this plea of the assessee.

5. On appeal, the AAC upheld the order of the ITO. On second appeal, the income tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal"), also upheld the order of the ITO, which was affirmed by the AAC.

6. After hearing the learned counsel for the parties, we are of the opinion that question No. (i) has to be answered in the negative, i.e., against the assessee and in favour of the revenue, whereas questions Nos. (ii) and (iii) have to be answered in the affirmative, i.e., against the assessee and in favour of the revenue. We have carefully gone through the circular on which reliance has been

placed by the assessee and we find that the only object of issuing this circular is that in a given case where the application for registration of a firm filed by the assessee (firm) remains pending for some time before the authorities and in view of its pendency the assessee files a declaration in pursuance of the provisions of section 184(7) of the Act for the subsequent assessment year and if the registration for the earlier year is refused later on, the assessee should not suffer and that he should be allowed to substitute the declaration filed by him for the subsequent assessment year by an application for registration of the firm. This circular in no way supersedes the provisions of section 184(4) of the Act. It has abundantly been made clear in the circular that if, for any reason, the application for registration is rejected after the firm has filed a declaration for the continuation of the registration for a later year, the ITO should instead of rejecting the declaration as incompetent, allow the partners of the firm concerned, an opportunity for filing an application for the registration within a reasonable time, say, one month, provided the declaration for the continuation of registration for that year was filed in time. The filing of the declaration in time is a condition precedent for application for giving the concession as envisaged in the circular. The requirements of section 184(4) of the Act, which prescribes the limitation, are mandatory and the assessee in law is required to file an application for the registration before the end of the previous year for the assessment year in respect of which the registration is sought. However, the ITO may entertain the application made after the end of the previous year if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year. As already pointed out the only purpose for which the circular has been issued is that the assessee should not suffer for the delay in the disposal of the application for the registration of the firm. That being the position, there is no question of the circular having automatically condoned the delay of 9 years in the filing of the application for registration also and subsequently the filing of the declaration. Thus, in the facts and circumstances of the case, the ITO was justified in not condoning the delay as the assessee was unable to put forth any reasonable explanation and, consequently, the Tribunal was right in upholding the refusal of the assessee's application for registration. The questions of law referred are answered accordingly with no order as to costs.