(1977) 02 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 406 of 1976

Jan Daood and Co. APPELLANT

Vs

Income Tax Officer, B-Ward and Another RESPONDENT

Date of Decision : 18-02-1977

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 184(7)

Citation : (1977) 6 CTR 130 : (1988) 113 ITR 772

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : Yogesh Agarwal and K.B. Jindal, for the Appellant; Deokinandan, for the Respondent

Final Decision : Disposed Of

Judgement

Chandrashekhar, J.—In this petition under Article 226 of the Constitution, the petitioner has prayed for quashing the order of the Income Tax Officer, B Ward, Moradabad, refusing to continue registration of the petitioner-firm for the assessment year 1971-72, and the order of the Commissioner of Income Tax dismissing the petitioner''s revision petition against the order of the Income Tax Officer.

2. Certain material facts which are not in dispute may be stated at the outset. The petitioner-firm had been granted registration for the assessment year 1961-62 u/s 26A of the Indian Income Tax Act, 1922. Thereafter, the registration of the firm was continued from year to year. For the assessment, year 1971-72, the petitioner filed its return of income on March 10, 1972. Along with the return it sent its declaration in Form No. 12 for continuation of the registration of the firm, under Sub-section (7) of Section 184 of the Income Tax Act, 1961 (hereinafter referred to as " the Act ")- The Income Tax Officer in the course of his assessment order dated December 30, 1972, refused to continue the registration of the firm on the ground that such declaration was belated having been filed beyond the time allowed by Clause (ii) of the proviso to that sub-

section. Against the aforesaid order of the Income Tax Officer, the petitioner filed an appeal to the Appellate Assistant Commissioner, Moradabad, who dismissed it as not being maintainable. Then, against the aforesaid order of the Income Tax Officer the petitioner filed a revision petition to the Commissioner of Income Tax, who, by his order dated March 13, 1975, declined to interfere with the order of the Income Tax Officer and rejected the revision petition.

3. The petitioner''s allegations in this petition are briefly these : On account of some difficulty with the accountant of its firm, the petitioner could not file its return of income within the time allowed by Sub-section (1) of Section 139 of the Act. It applied for extension of time till August 15, 1971, to file its return. The Income Tax Officer granted such extension up to August 15, 1971. On August 16, 1971, it (the petitioner) made another application in Form No. 6 requesting for extension of time up to March 31, 1972, to file the return. That application was handed over In the office of the Income Tax Officer which issued an acknowledgment to the petitioner for having received that application. The Income Tax Officer did not communicate to the petitioner his order on that application. On March 10, 1972, the petitioner filed its return of income for the year 1971-72, along with a declaration u/s 184(7) in Form No. 12 for continuation of registration of the firm.

4. In the counter-affidavit filed on behalf of the respondents, the petitioner''s averments that it gave an application for extension of time till August 16, 1971, that it had been granted such extension of time and that it again made another application on August 16, 1971, for further extension of time till March 31, 1972, have not been admitted. However, the fact of an acknowledgment having been issued to the petitioner by the office of the Income Tax Officer on August 16, 1971, has not been disputed. But it is stated in the counter-affidavit that the application said to have been given by the petitioner on August 16, 1971, for extension of time, could not be traced in the records of the Income Tax Officer and that it could also not be verified whether such an application had been made by the petitioner.

5. At the hearing of this petition, the learned senior standing counsel for the Income Tax department stated that the person who was the Income Tax Officer, B Ward, Moradabad, on August 16, 1971, has since died.

6. Shri K. B. Jindal, learned counsel for the petitioner, submitted that, as the petitioner had made an application on August 16, 1971, for extension of time till March 31, 1972, for filing its return of income and did not receive any communication from the Income Tax Officer as to whether such request for extension of time had been granted, it (the petitioner) bona fide believed that such extension of time had been granted and that hence it (the petitioner) filed on March 10, 1972, its return of income along with the declaration for renewal of registration.

7. Shri Jindal contended that in the circumstances the petitioner must be

regarded as having filed the declaration for continuation of registration of the firm within the time limit provided by Clause (ii) to the proviso of Section 184(7) of the Act and that even if such declaration for continuation of the registration was filed beyond time, it was a fit case for the Income Tax Officer to exercise his discretion to condone the delay in filing such declaration.

8. Sub-section (7) of Section 184 of the Act, as it stood before it was amended by the Taxation Laws (Amendment) Act, 1970, read as follows :

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

Provided that-

(i) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; and

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

9. For Clause (ii) of the above proviso, the following new clause was substituted with effect from April 1, 1971 :

" (ii) the firm furnishes, before the expiry of the time allowed under Sub-section (1) or Sub-section (2) of Section 139 (whether fixed originally or on extension) for furnishing the return of income for such subsequent assessment year, a declaration to that effect, in the prescribed form and verified in the prescribed manner, so, however, that where the Income Tax Officer is satisfied that the firm was prevented by sufficient cause from furnishing the declaration within the time so allowed, he may allow the firm to furnish the declaration at any time before the assessment is made."

10. Prior to April 1, 1971, a firm could file the declaration for continuation of its registration along with its return of income, whereas after April 1, 1971, such declaration has to be filed within the time fixed or extended , for filing the return of income. The learned senior standing counsel is right in contending that unless the time for filing its return of income had been extended beyond June 30, 1971, the declaration filed by the petitioner after June 30, 1971, should be regarded as belated. Even so, the question is whether the petitioner can be regarded as being prevented by sufficient cause from furnishing the declaration within the time referred to in new Clause (iii) of the proviso to Section 184(7) of the Act.

11. The Commissioner has held that the production of the acknowledgment issued by the office of the Income Tax Officer was not sufficient to prove that the petitioner had applied for extension of time because-

(i) a copy of that application was not produced by the petitioner ; and

(ii) it was difficult to believe that an assessee would apply for further extension of time by. 71/2 months to file his return of income.

12. Neither of the above reasons for the above conclusion of the Commissioner can be regarded as valid. Not every assessee retains copies of the applications made by him to the Income Tax authorities. Non-production of such copy cannot be regarded as a ground for disbelieving the petitioner''s assertion that he had made such application, when such assertion is supported by the acknowledgment issued by the office of the Income Tax Officer. That the petitioner was not likely to have requested for further extension of time by 71/2 months, appears to us to be a mere conjecture.

13. The Commissioner has stated in his order that it was the duty of the petitioner to find out whether the Income Tax Officer had granted extension of time for filing the return of income. If an assessee has made an application requesting for extension of time, is it not equally the duty of the Income Tax Officer to intimate to the assessee whether his request has been granted or refused ? At any rate, when the Income Tax Officer had not communicated to the petitioner his decision on its application for . extension of time, can it be said that the petitioner was led to believe that its request for extension of time had been granted or that it could wait till the Income Tax Officer communicated his decision ? The Commissioner has not applied his mind to these relevant aspects in holding that the petitioner was not prevented by sufficient cause from filing such declaration in time.

14. Shri Jindal invited our attention to another order passed by the same Commissioner of Income Tax in a revision petition filed by another assessee who had also not filed in time its declaration for continuation of registration of the firm for the same year, i.e., 1971-72. A copy of that order is produced as annexure " I " to this writ petition. Therein the Commissioner has observed as follows :

" It will be recalled that with effect from the assessment year 1971-72 there was a slight amendment in the law which required that requests for registration should be filed before the date for filing the return of income. It appears that this change in law was inadvertently lost sight of by the assessee and, therefore, a delay of two months in filing the application. Since the law was a new one and taxpayers had not yet become fully conversant with it, I think in the, very first year of the change in the law it can be said that the assessee was prevented by reasonable cause in filing the application. The order of the Income Tax Officer refusing registration is, therefore, set aside. He is directed to consider the assessee''s request for registration on merits and pass a fresh order. "

15. Shri Jindal complained that the Commissioner did not show to the petitioner the same indulgence as was shown to another firm in the above order though the petitioner''s case also related to the same year, i.e., 1971-72.

16. The learned senior standing counsel submitted that the case dealt with in

annexure " I " was distinguishable from the present case inasmuch as the delay in filing such declaration in that case was only by two months whereas in the present case the delay was by about 71/2 months. But there is nothing in the order of the Commissioner to show that he distinguished the present case from the aforesaid case on the ground of greater delay in filing such declaration.

17. The impugned order of the Commissioner of Income Tax suffers from manifest error of law and hence is liable to be quashed.

18. In the result we allow this petition and quash the order of the Commissioner of Income Tax dated March 13, 1975 (produced as annexure " G "). It will be open to him to dispose of the petitioner''s revision petition afresh and according to law.

19. In the circumstances of the case, we direct the parties to bear their own costs.

