(1975) 12 OHC CK 0026

In the Orissa High Court

Case No : S.J.C. No. 189 of 1974

Nilamani Ghosh and Partners — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 04-12-1975

Acts Referred:
Income Tax Act, 1961 — Section 246

Citation : (1977) 106 ITR 281

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : A. Pasayat, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—Upon the assessee''s application made u/s 256(1) of the Income Tax Act of 1961 (hereinafter referred to as "the Act") the following question has been referred for the opinion of the court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that in an appeal u/s 246(1)(c) of the Income Tax Act, 1961, the issue regarding the registration of the firm cannot be raised by agitating the question of status taken in the assessment order ?"

2. Assessee is a firm and the relevant assessment year is 1968-69, covering the accounting period October 1, 1967, to March 31, 1968. Five persons joined a firm in the name and style of M/s. Nilamani Ghosh and Partners and a formal deed dated April 1, 1963, had been drawn up. The firm was accorded registration for several assessment years including assessment year 1967-68. The said firm continued the business from April 1, 1967, to 30th of July, 1967, but was reconstituted with effect from October 1, 1967, with three partners only following the death of Sri Nilamani Ghosh, the managing partner, and the relinquishment of the other two partners. On November 23, 1970, the Income Tax Officer brought to the notice of assessee''s counsel the provision of Section 187(2) of the Act and required the assessee to file a return for the twelve months of the

accounting period covering the accounting period April 1, 1967, to March 31, 1968. On January 25, 1971, two returns of income were submitted, one for the period between October 1, 1967, to March 31, 1968, and the other for the entire financial year ending with March 31, 1968. An application in Form No. 11 signed by the three partners as per the deed of partnership dated October 7, 1967, which became effective from October 1, 1967, was also placed before the Income Tax Officer but that application was for the assessment year 1969-70. The Income Tax Officer pointed out that there was no application for the assessment year 1968-69 as required under the provision of Section 184(8) of the Act. An application in Form No. 11A was submitted on February 5, 1971, along with a petition for condoning the delay in the making of the application. The application was rejected and assessment was completed treating the firm as an unregistered one.

3. Assessee preferred a first appeal wherein he challenged the question of status and also carried a second appeal to the Tribunal and having lost in those forums has agitated the question which has now been referred to us.

4. Section 246 provides at length what orders are appealable to the Appellate Assistant Commissioner. Law is settled that an appeal is a creature of the statute and where there is no provision for an appeal, every original order of competent jurisdiction must be taken to be a final order. Clauses (c), (j) and (k) of Section 246 may now be extracted:

"Any assessee aggrieved by any of the following orders of an Income Tax Officer may appeal to the Appellate Assistant Commissioner against such order......

(c) an order against the assessee where the assessee denies his liability to be assessed under this Act or any order of assessment under Sub-section (3) of Section 143 or Section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed ;......

(j) an order under Clause (b) of Sub-section (1) or under Sub-section (2) or Sub-section (3) or Sub-section (5) of Section 185;

(k) an order cancelling the registration of a firm under Sub-section (1) or under Sub-section (2) of Section 186 ;......"

5. Undoubtedly, there is a statutory provision separately made regarding registration of the firm and Clauses (j) and (k) make provisions for appeal in regard to status arising out of a claim of registration of the firm. The Explanation occurring below Section 246 runs thus :

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

6. There is no clear indication in the Explanation that "registered firm''" is also a status for the purpose of Clause (c) of Section 246. Special provision having

been made in Clauses (j) and (k) to meet the situation relating to dispute of status of registered firm, we do not think reference to status in Clause (c) can cover the same field. The several clauses in Section 246 must be harmoniously construed so that there may not be conflict or undue overlapping. When a special provision has been made for the particular purpose, the general provision cannot be relied upon. One of the well-accepted principles of interpretation is that the special provision excludes the general. On this analysis we are of the view that "status" occurring in Clause (c) of Section 246 cannot take within it the dispute arising out of disallowance of the status of a registered firm. The Tribunal, in our view, came to the correct conclusion.

7. Our answer must, therefore, be against the assessee, that is :

On the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that in the appeal u/s 246(1)(c) of the Income Tax Act of 1961, the issue regarding registration of the firm cannot be raised by agitating the question of status taken in the assessment order.

8. We make no order as to costs.

N.K. Das, J.

9. I agree.