(1977) 05 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2313 of 1975

Nilamani Ghosh and Partners — APPELLANT

Vs

Income Tax Officer, Ward "B" — RESPONDENT

Date of Decision : 10-05-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 185, 246

Citation : (1978) 111 ITR 294

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.—Messrs. Nilamani Ghosh and Partners was a firm with five partners constituted under a deed dated April 1, 1963, and had been assessed as a registered firm up to assessment year 1967-68. On September 14, 1967, Nilamani Ghosh died. Two of the existing partners of the firm retired. With effect from October 1, 1967, a new partnership was constituted with three partners being Smt. Kusum Ghosh, wife of late Nilamani Ghosh, Biswanath Ghosh arid Kasinath Raut. For the assessment year 1968-69, one consolidated return was filed. The Income Tax Officer, however, split it up and made two assessments one from April 1, 1967, up to September 30, 1967, and the other from October 1, 1967, up to March 31, 1968. For the first period, he allowed the registration, to be continued. For the second period with which this writ application is actually concerned, the Income Tax Officer did not entertain the application for registration and completed the assessment by treating the partners as an unregistered firm.

2. The assessee preferred a first appeal wherein non-grant of registration was raised. Having lost before the Appellate Assistant Commissioner, the assessee pursued the matter before the Tribunal and there too the decision having gone against if, the following question had been referred to this court at the

assessee''s instance u/s 256(1) of the Income Tax Act: "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(c) of the Income Tax Act, 1961, the issue regarding the registration of the firm cannot be raised by igitating the question of status, taken in the assessment order ?"

3. This court by its decision reported in Nilamani Ghosh and Partners Vs. Commissioner of Income Tax, answered the question by saying (page 283): "On the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that in the appeal u/s 246(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." Thereafter, this writ application has been filed to quash the order refusing registration to the new firm.

4. Mr. Pasayat for the petitioner does not challenge the correctness of the decision of this court. If registration had been refused, the assessee was entitled to prefer an independent appeal and the correctness of the decision in the matter of registration could have been assailed in appeal and ultimately before this court in a reference. As no appeal had been carried in the matter of refusal of registration, this court did not agree to examine the question of registration. In the reported decision of this court referred to above, it has been clearly found (page 282):

"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."

5. Learned standing counsel has produced the original order of the Income Tax Officer at the time of hearing and we clearly find that there is actually a rejection. Once there was a refusal in the matter of registration, an appeal lay and the assessee having chosen not to prefer that appeal, this court declined to interfere in the matter in the reported decision. We see no scope for interference in the matter in the circumstances indicated. The writ application must accordingly fail and is dismissed. There would be no direction for, costs.

Das, J.

6. I agree.

