(1985) 07 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 227 of 1981

Uttam Construction Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:
Income Tax Act, 1961 — Section 184(4), 184(7), 185

Citation : (1986) 50 CTR 261 : (1985) 156 ITR 459

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant; B.K. Rawat, for the Respondent

Judgement

Verma, J.—This is a reference made u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessee for deciding the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in reversing the order of the Commissioner of income tax (Appeals) and in restoring the order of the Income Tax Officer u/s 184(4) of the Income Tax Act rejecting the assessee''s application in limine?"

2. The assessee-firm was carrying on business in the name of M/s. Uttam Construction Company, Khairagarh, comprised of five partners and the firm was granted registration for the assessment year 1972-73 u/s 185 of the Income Tax Act, 1961, which was continued up to the assessment year 1974-75 u/s 184(7) of the Act. On behalf of the firm, it was alleged that there was a change in the constitution of the firm evidenced by a fresh deed dated December 31, 1973. The accounting period of the assessee was the year ending on Diwali, 1974 and, therefore, the assessoe had to submit an application in "Form 11A" before the end of the accounting period ending on Diwali 1974, i.e., November 13, 1974, for registration of the reconstituted firm u/s 185 of the income tax Act. The firm, however, submitted the application on April 6, 1976, and attempted to explain the delay on the ground of inadvertence of their chartered accountant, Shri P.C.

Bafna, with whom the papers continued to He during that period. Affidavits of Shri Uttam Chand Jain, a partner of the firm, as well as the chartered accountant, Shri P.C. Bafna, were filed in support of this contention. This was done obviously to support the prayer for extension of time, in accordance, with the proviso to Sub section (4) of Section 184 of the Act.

3. The Income Tax Officer held the application to be time-barred u/s 184(4) of the Act and treated the firm as an unregistered firm by its order dated March 16, 1978, The assessee''s appeal to, the Commissioner (Appeals) was allowed by an order dated October 18, 1978. The Revenue''s objection that no appeal lay against rejection of the application, which was time-barred by virtue of Section 184(4) of the Act, was repelled and on merits, the explanation given by the assessee to account for the delay in filing the application was accepted. Accordingly, the Income Tax Officer, was directed to condone the delay and examine, the issue of registration of the firm afresh, on merits. The Revenue''s appeal to the Tribunal has succeeded, the same being allowed by the Tribunal''s, order dated April 21, 1980. The first contention of the Revenue relating to taxability of the appeal was rejected affirming the Commissioner''s (Appeals) view on that point, which was based on a number of decisions including some of this court. However, on merits, the Tribunal accepted the Revenue''s case even though on an entirely new ground. At the hearing, of the appeal before the Tribunal, reliance was placed on behalf of the Revenue on an application in "Form 12" dated June, 29, 197.5, signed by five partners of the old firm to contend that it was a circumstance 40 negative execution of a fresh partnership deed reconstituting the firm on December 31, 1973. Strong objection was taken on behalf of the assessee to this circumstance being relied, on contending that there was an explanation for the same and, therefore, even if this new ground was to be taken into account, the assessee should be given an opportunity to explain the same for which the assessee was possessed of material. The Tribunal, while recording this objection as well as the request of the assessee for opportunity to explain the circumstance, took into account the same without giving any such opportunity to the assessee and came to the conclusion that this circumstance by itself negatived the assertion made on affidavits by the assessee''s partner as well as its chartered accountant. Accordingly, on merits, it was held by the Tribunal that reconstitution of the partnership by a fresh deed dated December 31, 1973, was not acceptable with the result that there could be no cause to explain the delay. The Tribunal accordingly reversed the order of the Commissioner (Appeals) and restored that of the Income Tax Officer. It is in these circumstances that the assessee applied for a reference, which has been made u/s 256(1) of the Act for answering the aforesaid question,

4. The grievance made by learned counsel for the assessee is to the denial of any opportunity to the assessee to explain the circumstance of the application in "Form No. 12" dated June 29, 1975, signed by the five other partners before relying on it as the sole basis for reversing the finding of the Commissioner (Appeals) given on the basis of the uncontroverted affidavits of the assessee''s

partner and chartered accountant. He argues that this application was all along in the record even before the Income Tax Officer and the same was never relied on in this manner by the Revenue and, therefore, if the same had to be relied on as the sole basis for reversing the finding of the Commissioner (Appeals), it was incumbent on the Tribunal to give an opportunity to the assessee to explain the same by production of relevant material particularly when the assessee had expressly sought such an opportunity. In our opinion, this contention has merit and it must be accepted,

5. It is not disputed that it was open to the Tribunal to take into account even additional material produced before it by the parties for deciding the question relating to condonation of delay in making the application for registration of the firm. However, if any new material was to be relied on or any material, which though present on the record, was to be relied on for the first time, it is only reasonable that an opportunity should have been given to the parties to explain the same before an adverse inference was drawn against any of them merely on that basis. It is more so, when the material being present in the record was not relied on in this manner by any of the two lower authorities. The Tribunal was, therefore, not justified in reaching the concluded opinion on the point without giving an opportunity to the assessee to explain the above circumstance. We may add that for this purpose, the Tribunal could either itself take the explanation and any further material produced by the parties as evidence or direct the departmental authorities to give a fresh finding after taking into account the entire material including that produced by the parties for this purpose. Such a course not having been adopted by the Tribunal before reaching the above conclusion, the same will have to be done now.

6. Consequently, the reference is answered in favour of the assessee as under:

"On the facts and in the circumstances of the case, the Tribunal was not justified in reversing the order of the Commissioner of Income Tax (Appeals) and in restoring the order of the Income Tax Officer u/s 184(4) of the Income Tax Act rejecting the assessee''s application in limine without giving an opportunity to the assesses to explain the circumstance relied on against it for the first time."

7. However, in the circumstances of the case, there shall be no order as to costs.

