(1996) 07 KL CK 0060

In the High Court Of Kerala

Case No : Income Tax R. No. 13 of 1989

V.M. Automobiles APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 22-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 184(7)
Income Tax Rules, 1962 — Rule 24

Citation : (1998) 230 ITR 724

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Respondent

Judgement

V.V. Kamat, J.—We are concerned with the situation whereunder the Commissioner of Income Tax in exercise of powers u/s 263 of the Income Tax Act, 1961, cancelled the order of the Income Tax Officer allowing the registration of the firm to continue. Therefore, the question for our answer is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Commissioner of Income Tax u/s 263 cancelling the order of the Income Tax Officer allowing the registration to continue ?"

2. The assessment year is 1980-81, the previous year being the financial year ending on March 31, 1980. The undisputed facts are that the assessee is a partnership firm and had filed in a proper manner Form No. 12 in respect of the assessment year in question 1980-81. It is also undisputed that with regard to the previous assessment year, the assessee was granted registration and with regard to the assessment year in question, what was under consideration was only of continuation of registration.

3. The statute deals with this situation in Section 184(7) of the Act. In enacts that where registration is granted to any firm for any assessment year; it shall

have effect for every subsequent assessment year. For this effect for the subsequent period there are two conditions. They are also enacted in the proviso to Section 184(7). The first condition is that there is no change in the constitution of the firm or the shares of the partners on the basis of which the registration was granted earlier. The second condition is that before the expiry of the time allowed u/s 139(1) or (2) of the Act-whether fixed originally or on extension, the firm furnishes the required declaration in the prescribed Form No. 12 with verification in the prescribed manner. It is also enacted in addition 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 for the assessment year in question is made by him.

4. The only thing that is relevant for consideration in this reference is the situation that the assessee-firm had filed Form No. 12 well in time signed by the partners, but the signatures of the partners have been made on September 15, 1979, and the declaration is filed on September 22, 1979.

5. When there is no change in the constitution of the partnership or in the shares of the partners, the provisions of rule 24 of the Income Tax Rules read with the contents of Form No. 12 necessitates affirmation to that effect that there is no change up to the last day of the previous year in question. In other words, the requirement expected on the factual matrix is that there has been no change as required by the provisions up to March 31, 1980. The situation presents difficulty because the declaration was signed by the partners much before on September 15, 1979, and even thereafter it was filed also much before on September 22, 1979. This was well during the financial year with regard to the assessment year in question, the previous year having ended on March 31, 1980. The Income Tax Officer completed the assessment u/s 143(1) of the Income Tax Act, having allowed registration to enure.

6. The Commissioner of Income Tax exercised powers u/s 263 of the Income Tax Act, 1961, because he found the mistake rendering, according to him, the declaration to be invalid because the declaration was signed by all the partners on September 15, 1979, and came to be filed subsequently a week thereafter on September 22, 1979. This was, according to the Commissioner of Income Tax, Trivandrum, erroneous, being prejudicial to the Revenue.

7. It must be stated that this is the only defect that the declaration was signed much earlier and filed within a week thereafter as stated above.

8. It was submitted before the Commissioner of Income Tax exercising powers u/s 263 of the Act that when there is no dispute about the genuineness of the partnership in the same situation and shape, the Income Tax Officer could have given an opportunity to file a fresh declaration if so required to complete what was submitted to be only a technical lapse, when not only the genuine firm existed as recognised by the Income Tax Department by granting registration to

it in the previous year, it also continued in the same shape and situation. It was submitted that this could have been done by the Income Tax Officer.

9. It was also submitted that on the relevant facts, the effect of registration would not be denied to the assessee-firm with regard to the assessment year under consideration. The proceedings u/s 263 of the Act resulted in the directions to the Income Tax Officer to cancel the continuance of registration allowed to the assessee and as a consequence proceed with the assessment according to the law for the assessment year in question.

10. The decision of the Commissioner of Income Tax, Trivandrum, is confirmed by the Income Tax Appellate Tribunal, Cochin Bench. The Tribunal took the view that the declaration could not be regarded as a valid one. In the process of reasoning, the Tribunal relied on its own decision which in turn placed reliance on the decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Trinity Traders, , to the effect that the declaration required u/s 184(7) of the Act requires a statement that there has been no change in the constitution of the firm or in the shares of the partners up to the last day of the previous year relevant to the assessment year in question. If the declaration is signed at any time earlier than the last date of the previous year, such event or facet would render the said declaration invalid as it is the requirement of the statutory provision.

11. The Income Tax Appellate Tribunal has referred the question in the light of the observations of this court in Mathew and Mathew Vs. Commissioner of Income Tax, , to the effect that the declaration if only defective, the assessee gets a legal right to be entitled to an opportunity for rectification of the defect in accordance with the statutory provisions of Section 185(3) of the Act.

12. After hearing learned senior tax counsel and considering the factual matrix, in our judgment, the factual matrix summarised hereinbefore would not require a travel to consider the situation because in view of the provisions of Section 184(7) and the two clauses to the proviso thereunder as well as Section 185(3) of the Act, if applied to the factual matrix before us, the situation would lead to requiring the Income Tax Officer to act according to the above statutory provisions.

13. The above statutory provisions clearly postulate a situation that if there is no change in the constitution of the firm as well as with regard to the shares of the partners, then the factum of change or absence thereof becomes relevant only in the matter of its continuance for the subsequent year, the filing of the declaration really does not extend in the context of time. In fact it is the underlying legislative intent of the key words of Section 184(7) that the fact of registration has an effect which is carried forward for every subsequent assessment year and if the situation is of no change whatsoever, then by virtue of Section 184(7), clause (ii), of the proviso thereto, the concerned Income Tax Officer gets discretion whereby he can allow the firm to place the declaration on record at

any time before the assessment is made. Thus, in a situation of no change whatsoever, the filing of the declaration in regard to the process of continuation would have to be understood as a curable situation within the discretionary powers of the Income Tax Officer and in this context dealing with the situation will postulate the legislative intent and its application that on satisfaction of the conditions of the proviso, the fact of registration having been granted, will have to be understood as having effect for every subsequent assessment year thereafter.

14. In our judgment, in such a situation with the cluster of factual matrix specified hereinabove, the Commissioner of Income Tax, Trivandrum, could not be justified in exercise of powers u/s 263 of the Income Tax Act, 1961, to the extent of directing the Income Tax Officer to cancel the continuation of registration and as a consequence thereof, form an assessment according to law on the basis that the registration is not continued. The factual matrix would not enable us to permit an invalid declaration on the facts and in the circumstances of the case.

15. Equally well, the Tribunal would be sharing the same situation in endorsing the view of the Commissioner of Income Tax, Trivandrum.

16. In our judgment, the facts do not show that the declaration is invalid because the Income Tax Officer had ample powers as discussed above. In our judgment, the situation has to be understood in the light of the legislative provision that continuance of the registration is the normal course and any requirement in regard thereto becomes the subject-matter of the use of the discretion by the Income Tax Officer, especially when it appears mat the constitution of the firm remained the same and there is no situation of change whatsoever, resulting in the partners putting their signatures on September 15, 1979, and filing the concerned declaration after a week therefrom on September 22, 1979, would only be a technical lapse when there was a genuine firm in existence. This could have been dealt with by the Income Tax Officer and therefore could not have been considered to be erroneous in such a way as to warrant an order of cancellation of the continuance of the registration as has been done by the authorities below.

17. For the above reasons the question is answered in the negative, in favour of the assessce and against the Revenue.

18. A copy of this judgment under the seal of the court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.