

Sir Hukumchand and Mannalal Co.

Vs

Commissioner of Income-Tax, Madhya Pradesh, Nagpur and Bhandara

Civil Appeal No. 223 of 1965

(K. Subha Rao, J. C. Shah, S. M. Sikri, JJ)

04.01.1966

JUDGMENT

SUBBA RAO J. –

This appeal, on a certificate granted by the Madhya Pradesh High Court, raises the question whether an appeal lies under section 30(1) of the Indian Income-tax Act, 1922, hereinafter called the Act, to the Appellate Assistant Commissioner against the order of an Income-tax Officer cancelling an order granting registration of a firm under section 26A of the Act.

The facts material for the said question may be briefly stated. The appellant is a firm constituted under a deed of partnership dated July 16, 1948. The Income-tax Officer registered the said firm under section 26A of the Act for the year 1950-51. The registration was renewed for the years 1951-52 and 1952-53. On November 30, 1957, the Income-tax Officer renewed the registration for the assessment year 1953-54. On March 6, 1959, on the ground that the firm was not a genuine one, the said officer cancelled the registration under rule 6B of the Income-tax Rules. The appellant preferred an appeal against that order to the Appellate Assistant Commissioner, Indore. On July 15, 1959, the said Assistant Commissioner rejected the appeal for the reason that no appeal lay against the order of the Income-tax Officer cancelling the registration. The appeal filed by the appellant against that order to the Income-tax Appellate Tribunal, Bombay, was dismissed. At the instance of the appellant, the following question was re

"Whether, on the facts and circumstances of the case, the order passed by the Income-tax Officer under rule 6B of the Indian-tax Rules cancelling the certificate of renewal of registration granted to the assessee is appealable under section 30 of the Income-tax Act ?"

A Division Bench of the High Court of Madhya Pradesh answered the reference against the appellant. It held that no appeal lay under section 30 of the Act against the order of the Income-tax Officer cancelling registration to the Appellate Assistant Commissioner. Hence the appeal.

The only question in this appeal is, whether an order cancelling the certificate of renewal of registration made under section 26A of the Act by an Income-tax Officer is subject to an appeal under section 30(1) to the Appellate Assistant Commissioner. At the outset, the relevant provisions may be usefully read :

Section 26A : (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual

shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

Rule 6 : Any firm to whom a certificate of registration has been granted under rule 4 may apply to the Income-tax Officer to have the certificate or registration renewed for a subsequent year...

Rule 6A : On receipt of an application under rule 6 the Income-tax Officer may, if he is satisfied that the application is in order and that there is or was a firm existence constituted as shown in the instrument of partnership, grant to the assessee a certificate signed and dated by him in the following form :- ...

Rule 6B : In the event of the Income-tax Officer being satisfied that the certificate granted under rule 4, or under rule 6A, has been obtained without there being a genuine firm in existence, he may cancel the certificate so granted.

Section 30 : (1) Any assessee... objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 23 or to a refusal to register a firm under sub-section (4) of section 23 or section 26A... may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order."

The gist of the said provisions relevant to the present inquiry may be stated thus : Under section 26A of the Act an application may be made to the Income-tax Officer on behalf of a firm for registration for the purposes of the Act. Such an application has to be filed and disposed of in the manner prescribed in the Act. Under the rules, an application for renewal of registration of a firm which has already been registered in the previous years has to be filed before the Income-tax Officer. That application will be disposed of in the manner prescribed by rules 6A and 6B Under those rules, the Income-tax Officer is authorised to make three kinds of orders, viz., (i) he can refuse to renew the registration of the firm; (ii) he can register the firm; and (iii) he can cancel the renewal of registration if he is satisfied that the renewal has been obtained without there being a genuine firm in existence. The crucial point to be noised is that the said three kinds or orders, having regard to the circumstances of ea

But Mr. Viswanatha Sastri for the Revenue contended that there was internal evidence in section 30 of the Act itself to show that such a construction was not possible. He further argued that under the income-tax law there was no scope for equitable considerations, and under the express provisions of section 30 no appeal lay against the order of the Income-tax Officer cancelling the certificate of registration. In support of his contention he relied upon that part of section 30 of the Act which we have extracted earlier upon that part of section 30 of the Act which we have extracted earlier and contended that when the legislature in the context of the orders made under section 23(4) spoke separately of the order of registration of a firm and an order refusing to register a firm and in the same section, in the context of section 26A, it mentioned only refusal to register a firm, it clearly expressed its mind that in the former case an appeal would lie against both the orders, whereas in

the latter case an appe

Section 23(4) Section 26 A(2)

... the Income-tax Officer...in The application shall be..... the case of a firm, may refuse to dealt with by the Income-tax register it or may cancel its Officer in such manner as may registration if it is already be prescribed. registered.....

A comparative study of the relevant parts of these two provisions at once shows the distinction between the two. Under section 23(4) while the Income-tax Officer can make an order refusing to register a firm or may cancel the registration if it is already registered, under section 26A (2) he can only make an order in such manner as may be prescribed. The manner prescribed, as we have already indicated earlier, provides for three different kinds of orders to be made in the same application with the result that an order of refusal to renew a certificate and the order cancelling the certificate renewed are given the same effect, namely, refusal of the application to register. That apart, when section 30 provides for an appeal against the orders under section 23(4) and also against orders made under section 26A, it has incorporated the two forms of orders embodied in section 23(A) and used a general word in providing an appeal against an order under section 26A, for the nature of the order is not described but l

If so, it follows that the words " refusal to register a firm" in section 30 of the Act are wide enough to take in the orders made under rules 6A and 6B refusing to renew the registration and also cancelling the certificate so renewed.

By so holding we are not unaware that equity has no place in construing the provisions of the Income-tax Act. Indeed, we have not introduced any equitable consideration in the matter of construction. We have come to the conclusion on a fair reading of the relevant provisions of the Act and the Rules made thereunder.

In the result, we answer the question propounded for the High Court's decision in the affirmative. The order of the High Court is set aside and the appeal allowed with costs.

Appeal allowed.

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