

Commissioner of Income-tax, A.P

Vs

Ashoka Engineering Co., Grafik India and Syed Jaffar & Sons, Secunderabad

Civil Appeals Nos. 643-44 of 1977, 5552 of 1990

(S. Ranganathan, N.D. Ojha, Smt. M.S. Fathima Beevi JJ)

17.01.1992

JUDGMENT

1. Leave granted in SLP (C) Nos. 3920-23/1977.
2. All these appeals raise a common question and can be disposed of by a common order. In all these cases the respondents assesseees filed either applications for registration under Section 184 of the Income-tax Act or a declaration for continuance of registration under the same section. Section 184(4) requires the application to be made before the end of the previous year for the assessment year in respect of which registration is sought but the proviso to the subsection empowers an Income-tax Officer to entertain the application if he is satisfied that the firm was prevented by sufficient cause from making an application before the end of the previous year. Likewise, subsection (7) of Section 184 requires that the declaration should be made within the time allowed therefor. But the sub-section also permits the Income-tax Officer, if he is satisfied that the firm was prevented by sufficient cause from furnishing the declaration within the time allowed, to allow the firm to furnish the declaration at any time before the assessment is made. In the present cases, however, the Income-tax Officer was not satisfied that there was sufficient cause which prevented the assesseees from filing their applications or declarations within the time allowed. He, therefore, completed the assessments of the respondents taking their status as unregistered firm.
3. The assesseees preferred appeals to the Appellate Assistant Commissioner. The short question before us is whether these applications were maintainable. The Department's case is that these appeals are not maintainable inasmuch as section 246, which deals with the subject-matter of the appeals before the Appellate Assistant Commissioner, does not provide for an appeal from an order under Section 184(4) or under Section 184(7). This view has been accepted in a number of judicial decisions on which Sh. Ahuja relies before us.
4. On the other hand, the respondents rely on the terms of Section 185(1), (2) and (3). These subsections, as they stood originally read as under:

"Section 185.-- Procedure on receipt of application.

(1) On receipt of an application for the registration of a firm, the Income-tax Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and

(a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year ;

(b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

(2) The Income-tax Officer shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation.

(3) If the defect is not rectified within such time, the Income-tax Officer may reject the application."

Civil Appeal No. 5552/ 90 which is the case of under Section 184(7) relates to the assessment year 1971-72. With effect from 1-4-71, Section 185(2) and (3) were amended to read as follows:

"Section 185.- - Procedure on receipt of application. -

(2) Where the Assessing Officer considers that the application for registration is not in order, he shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation; and if the defect is not rectified within that period, the Assessing Officer shall, by order in writing, reject the application.

(3) Where the Assessing Officer considers that the declaration furnished by a firm in pursuance of sub-section (7) of Section 184 is not in order, he shall intimate the defect to the firm and give it an opportunity to rectify the defect in the declaration within a period of one month from the date of such intimation; and if the defect is not rectified within that period, the Assessing Officer shall, by order in writing, declare that the registration granted to the firm shall not have effect for the relevant assessment year."

It may be mentioned that Section 246(j), as it stood at the relevant time, provided for an appeal against the orders passed under subsection (1), (2) or (3) of Section 185.

5. The two points of view urged before us are these: On behalf of the Department, Sh. Ahuja contends that an application for registration or a declaration filed beyond the due date is no application or declaration in the eye of law and that the consequence is that such an application or declaration cannot at all be entertained by the Income-tax Officer unless he is satisfied that there exists some sufficient cause for the delay. On the other hand, the other point of view is that the provision in Section 185(2) & (3) is sufficiently wide to take in these cases as a delayed application can be said to be an application not in order because they have not been filed within the stipulated time. In such cases, like any other defect this defect also should be brought to the notice of the assessee and, if he does not rectify the defect, the Income-tax Officer has to pass an order rejecting the application. In other words, the contention is that even a delayed application is a defective application and, when this is not entertained as Sh. Ahuja contends, what really happens is that the Income-tax Officer rejects the application as not being in order. This point of view has been

accepted in a large number of decisions which are referred in the latest of these cases which is reported as Commr. of Income tax v. Nagarmal Bisheshar Lal, tax v. 190 ITR 468: (1991 Tax LR 79) (All). The other point of view, advocated by the Department, is reflected in Bhambhani v. Commr. of Income-tax, (1991) 190 ITR 480: (1991 Tax LR 199) (Orissa).

6. We have heard counsel for both the parties. The question at issue is regarding a right of appeal. It is true that there is no inherent right of appeal to any assessee and that it has to be spelt from the words of the Statute, if any, providing for an appeal. But it is an equally well settled proposition of law that, if there is a provision conferring a right of appeal it should be read in a reasonable, practical and liberal manner. Having considered the two alternatives which have been placed before us, we agree with the cases which have taken the view that the cases before us can be treated as cases where the application or declaration is not in order and is consequently rejected. This construction does not place any undue strain on the language of Section 185(2) or (3). It will be appreciated that even if an application is filed before the Income-tax Officer which prima facie appears to be out of time, the Income-tax Officer cannot straightway reject it or refuse to entertain it. He will have to give an opportunity to the assessee to show cause how it can be entertained. Sometimes even his impression that there is delay may itself be shown to be wrong. If the assessee satisfies the Income-tax Officer that there was sufficient cause, then the application has to be entertained by the Income-tax Officer. In other words, the defect that the application was beyond time stands remedied and the application is in order.

7. On the other hand, if delay is not condoned, the officer rejects the application as not "in order". The defect need not be something in the application. It can also be one in the procedure prescribed for making the application. In our opinion, there is nothing artificial or strained in the interpretation placed by the High Courts that cases where registration is refused for the reasons set out in Section 184(4) or (7) are really cases where there is an order refusing registration to the firm by rejecting its application within the meaning of Section 185(2) or (3).

8. It is true, as Sh. Ahuja points out, that an order refusing registration within the meaning of Section 185(1) can be passed only for the reasons set out in that sub-section. But the language of the sub-sections (2) & (3) is more liberal and we think that the view taken by the catena of decisions which have brought cases of this type under Section 185(2) and (3) so as to enable the assessee to have a right of appeal is the more reasonable and equitable view.

9. It should not be forgotten that the question under consideration is a question of the maintainability of an appeal. It is for the appellate authorities to decide whether on the facts of each case, there is any ground for condonation of delay in the filing of application and on that, we express no opinion.

10. For the reasons stated above, we dismiss these appeals. In the circumstances, we make no order as to costs. Appeal dismissed.

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