

(1982) 09 MP CK 0005

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 189 of 1979

Mahakoshal Ceramics

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Sept. 27, 1982

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 184(7), 264

Citation: (1983) 33 CTR 22 : (1983) 143 ITR 976

Hon'ble Judges: G.L. Oza, J; B.C. Verma, J

Bench: Division Bench

Advocate: B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

Oza, J.

This is a reference made by the Income Tax Appellate Tribunal to this court for answering the question :

" Whether, on the facts and circumstances of the case, the income tax" Appellate Tribunal failed in law in holding that the order of the Appellate Assistant Commissioner of Income Tax giving direction to the Income Tax Officer, to pass a fresh order stating the reasons for adopting the status of the assessee as " unregistered firm" in an order u/s 143(3), was not sustainable ? "

2. The facts as stated by the Appellate Tribunal are that the assessee is a firm and was granted registration in the assessment year 1969-70 but for the assessment year under appeal, i.e., 1971-72, the assessee filed a declaration in Form No. 12 seeking continuation of registration u/s 184(7) of the I.T. Act. This declaration was not filed within the prescribed time and an application explaining the reasons for the delay and seeking condonation was filed. The ITO refused to condone the delay and completed the assessment taking the status of the assessee as an unregistered firm. The assessee in its appeal against the order of assessment raised the ground of status as well. The AAC set aside the assessment order and remanded the case to

the ITO directing him to deal with the question of continuation of registration in the assessment order itself.

3. After remand, when the matter went before the ITO, he dealt with the question of registration u/s 184(7) separately and again refused to allow continuation of registration. Against this order of the ITO, the assessee filed an appeal to the AAC, who dismissed the appeal holding that no appeal lay against the order refusing to condone the delay u/s 184(7) of the I.T. Act.

4. Against this order of the AAC, the assessee preferred an appeal before the Appellate Tribunal and simultaneously filed a revision petition u/s 264 of the I.T. Act before the Commissioner. The assessee later on sought withdrawal of the appeal and it was dismissed as withdrawn by the Appellate Tribunal. The Commissioner heard the revision petition and by his order dated July 28, 1976, dismissed it. The result was that the order refusing to condone the delay and not allowing continuation of registration passed by the ITO was confirmed. It appears that the ITO had passed a separate order u/s 143(3) after the case was remanded by the AAC. The assessee appealed against that order before the AAC who directed the ITO to pass a fresh order stating reasons for adopting the status as an unregistered firm.

5. The Department preferred an appeal against the order of the AAC contending that the question of status had already become final after the order passed by the Commissioner and the AAC was not competent to direct the ITO to examine the issue again. On this appeal by the Department, the Appellate Tribunal took the view that as the matter of registration has become final after the orders of the Commissioner for the same year the same question cannot be reagitated in another form and in this view of the matter, the Appellate Tribunal allowed the appeal of the Department and it is after this judgment that the assessee submitted an application to the Appellate Tribunal for making a reference to this court and the Tribunal, therefore, has made this reference seeking an answer to the question quoted above.

6. In the same matter, the assessee submitted an application before the Appellate Tribunal u/s 154 of the I.T. Act for rectification of the Tribunal's order dated July 28, 1976, seeking correction of the order of dismissal of the appeal as withdrawn. The Tribunal dismissed this application and, thereafter, the assessee submitted an application for making a reference on that question also and the Tribunal has made a reference on that question, which is Misc. Civil Case No. 207/79 : (see p. 969 supra).

7. It is not disputed by the learned counsel appearing for the assessee that the view of law as it prevailed when the appeal against the AAC's order before the Tribunal was filed was that an order u/s 184(7) was not appealable. It was contended that, in fact, it was because of this that, having preferred an appeal, the assessee chose to get it dismissed as withdrawn so that he could pursue the remedy of revision before

the Commissioner about which Misc. Civil Case No, 207/79 is a reference [[Mahakoshal Ceramics Vs. Commissioner of Income Tax,](#)]. But it was contended that the later view of the law is that even an order u/s 184(7) is appealable and the learned counsel referred to the decision in Misc. Civil Case No. 3/78, decided on 28th August, 1981 [[Commissioner of Income Tax Vs. Jabalpur Transport Development Co.,](#)]. But it is not disputed that the appeal having been withdrawn and having been dismissed as withdrawn, the order passed by the ITO u/s 184(7) became final as the revision to the Commissioner also was dismissed and we have held that the Tribunal was justified in rejecting the application of the assessee for rectification of the order dismissing the appeal as withdrawn. It is, therefore, apparent that, now, that the order passed by the ITO refusing to condone the delay and, therefore, refusing to accept the declaration and continue the registration of the firm, has become final, and it is, therefore, apparent that once that order had become final in a subsequent appeal before the AAC, he could not have remanded the case with a fresh direction to state reasons for adopting the status of the assessee as an unregistered firm in an order u/s, 143(3).

8. It was contended by the learned counsel for the assessee that, in fact, against the first order of assessment, an appeal was taken to the AAC and the AAC remanded the case with a direction that he should give reasons for not accepting the registration. It was contended by the learned counsel that the ITO, instead of following the directions of the AAC dealt with the question of delay in filing the declaration separately under Clause (7) of Section 184 and this, according to the learned counsel, was without jurisdiction as it was not within the ambit of the powers of the ITO to proceed in that manner against the specific direction by the appellate authority. But still the ITO followed the course that it followed and it appears it was because of this that the assessee instead of pursuing the appeal before the Appellate Tribunal got that appeal dismissed as withdrawn and pursued the remedy of revision only.

9. But after the revision was dismissed, it is unfortunate that the assessee did not follow the course of taking appropriate steps to get that order of the ITO u/s 184(7) quashed as being without jurisdiction. The result of the dismissal of the revision petition was that that order was maintained and, therefore, there was no option left with the ITO to assess the assessee as an unregistered firm. And when the appeal, a second time, was taken to the AAC, so far as the question of continuation of registration was concerned, as it had become final, it was not open to the AAC to reopen that question and direct the ITO to pass a fresh order of assessment stating reasons for refusal of continuance of registration and it is, therefore, apparent that the Tribunal was right in setting aside this order of the AAC on an appeal preferred by the Department.

10. It is, no doubt, true that a delay of a few days has ultimately resulted in the assessment of the assessee as an unregistered firm and could be said to be a

hardship but it is clear that the assessee, when the revision was dismissed, failed to take steps to get that order of the ITO quashed. That not having been done, it is clear that the AAC could not have reopened the question when the question was set at rest by the orders of the Commissioner in revision and the view taken by the Tribunal, therefore, could not be said to be erroneous.

11. In the light of the discussion above, therefore, our answer to the question is in the negative. The Tribunal has not failed in law in holding that the AAC could not give directions to the ITO to pass a fresh order stating reasons for adopting the status of the assessee as an unregistered firm in an order u/s 143(3).

12. In the circumstances of the case, parties are directed to bear their own costs.