

(1966) 02 PAT CK 0009

Patna High Court

Case No: Misc. Judl. Case No"s. 46 and 47 of 1963

Samiur Rahaman and
Brothers

APPELLANT

Vs

The Commissioner of
Income Tax

RESPONDENT

Date of Decision: Feb. 24, 1966

Acts Referred:

- Income Tax Act, 1922 - Section 34, 66
- Income Tax Rules, 1962 - Rule 6B

Citation: AIR 1966 Patna 285 : (1967) 66 ITR 22

Hon'ble Judges: S.N.P. Singh, J; H. Mahapatra, J

Bench: Division Bench

Advocate: S.S. Asghar Hussain, Iqbal Ahmed and Md. Khalil, for the Appellant; S.N. Dutta and Leila Seth, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. These are two references made by the Income Tax Appellate Tribunal u/s 66(1) of the Income Tax Act relating to the assessment years 1964-55 and 1955-66. Originally, assessment was completed for those two years u/s 28(8) of the Act after allowing a registration of the assessee as a registered firm u/s 26A of the Income Tax Act. In connection with the assessment proceedings for the next three years, the Income Tax Officer discovered certain discrepancies between the assessee's operation through the Banking account and the assessee's relationship under the registered Partnership deed and refused therefore the renewal of registration of the assessee's firm u/s 26A. Subsequent to that, an order was passed under Rule 6B cancelling the registration of the firm in respect of assessment years 1954-55 and 1955-56. Thereupon, notice u/s 34 was issued to the assessee for reopening the assessment for those two years and, after compliance by the assessee, the

assessments were made. Against those assessments, the assessee went in appeal to the Appellate Assistant Commissioner and failing there, before the Appellate Tribunal.

Before both those authorities, the assessee wanted to challenge the order cancelling registration as passed against him under Rule 6B by the Income Tax Officer and contended that the re-assessment u/s 34 was invalid because illegal order was passed under Rule 6B. The Appellate Tribunal (as did the Appellate Assistant Commissioner) did not accept the assessee's contention and upheld the assessment made u/s 34 of the Income Tax Officer. In this back-ground the assessee asked for a reference and obtained the statement of case in which the question for our consideration was framed as follows:-

"Whether in the facts and circumstances of the case and in view of the Tribunal's decision for the assessment years in question that the assessee's status should be taken to be that of a firm, cancellation of registration under Rule 6B of the Income Tax Rules was legal and justified ?

2. Learned Counsel appearing on both sides agreed that the question requires reframing in view of the facts arising from the Tribunal's order Accordingly, the question is framed as follows:-

"Whether in the facts and circumstances of the case, the proceeding u/s 34 of the Indian Income Tax Act were validly initiated?"

3. As we have already indicated, the proceedings u/s 34 were initiated after the order under Rule 6B was passed cancelling the registration of the assessee's firm for the years 1954-55 and 1955-56. Whether that order was right or wrong, this is not the proper stage to consider that. The assessee might have gone in appeal against that and agitated that question at different stages as provided under the law. That he did not do. Learned Counsel appearing for him, however, contends that the bona fide impression prevailing with the assessee and his legal advisers was that there was no provision in law for an appeal against an order passed under Rule 6B. On account of some decisions of the Madras High Court, this erroneous impression may have held the ground. Now, that position has been clarified by a decision of the Supreme Court, in which it has been held that that order also can be agitated in appeal as if it were an order passed u/s 6A refusing registration. Be that, as it may, in this proceeding u/s 66 of the Act it will not be possible for the assessee to agitate about the propriety of the order passed under Rule 6B cancelling the registration of the firm by the Income Tax Officer. It appears from the order of the Appellate Tribunal that such a stand was taken by the assessee before them, and they defended the cancellation of registration on the ground that the Tribunal itself in regard to the subsequent three years' assessment upheld the refusal of registration of the assessee's firm on some materials. In our view, the merits of the order passed under Rule 6B were not for scrutiny in the appeal arising out of the

assessment u/s 34, before the Tribunal.

4. As long as that order of cancellation under Rule 6B was there, that was undoubtedly an information which came to the Income Tax Officer, upon which he could have thought that the assessee's income had escaped assessment partly, because originally assessment had been made on the basis of a registered firm. If it was not a firm, then the assessment would necessarily be otherwise. In that view, after the cancellation of the registration of the firm, there was fresh material before the Income Tax Officer on which he could think that there was an escapement of assessment and could serve a notice u/s 34 upon the assessee for re-assessment of his income. In that view, the proceedings u/s 34 cannot be said to be invalidly initiated.

5. It is not contended by learned Counsel that the case does not come under Sub-section 34(1)(b), in other words, the cancellation of the registration under Rule 6B did not amount to an information which could justify initiation of proceedings u/s 34: nor is it contended by him that the re-assessment was initiated beyond the stipulated time of four years.

6. Learned Counsel, however, very strenuously attempted to bring the order passed under Rule 6B for examination in this case before us, but, as we have said, the forum of that is otherwise and if advised, he may seek his redress in that forum subject to the question of limitation.

7. For the reasons given above, we have to answer the question as refrained in the affirmative and dispose of these references accordingly. In view of the circumstances of the case, there will be no order for cost.