

(1934) 12 CAL CK 0037

Calcutta High Court

Case No: IT Reference No. 234 of 1971

Barick Screen Corpn.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Dec. 17, 1934

Judgement

@JUDGMENTTAG-ORDER

Dipak Kumar Sen, J.

For the assessment year 1952-53 Barick Screen Corpn. was assessed to income tax pursuant to a notice u/s 34(1) of the Indian income tax Act, 1922 issued in the name of Barick Screen Corpn. The return was filed by the assessee claiming the status of a firm but assessment was made on the assessee as an AOP. The matter went up in successive appeals to the AAC and the Tribunal.

2. In the proposal for issuing the notice u/s 34(1A) the assessee was described as an unregistered firm and the approval for initiating proceedings was given on that basis. The Tribunal held that the notice initiating the proceedings u/s 34 was bad and the assessment order was cancelled.

3. On a reference by the revenue to this Court it was held, inter alia, that the Tribunal was wrong in holding that the prerequisite conditions for initiating proceedings u/s 34 had not been satisfied and that the assessment was not valid on that ground.

4. It was held by this Court that the necessary condition precedent had been fulfilled before sanction for initiating proceedings against the assessee was obtained and, in any event, it was not obligatory that the status of the assessee should be clearly determined at that stage, particularly as the assessee was being assessed for the first time. It was held further that the sanction obtained to initiate proceedings against the assessee in the status of an unregistered firm was not vitiated by the fact that in the final assessment the assessee was assessed as an AOP.

5. The assessee intends to prefer an appeal to the Supreme Court from the aforesaid judgment and seeks a certificate in this application that this is a fit case for appeal to the Supreme Court. The substantial question of law which it is contended arises in the judgment is framed as follows:

Whether the condition in determining the status of the assessee in the course of assessment proceedings u/s 34 of the Indian income tax Act, 1922 can be applied in obtaining sanction from the Commissioner on which satisfaction of the Commissioner is accorded under sub-clause (iii) of the notice u/s 34(1)(a) ?

6. It does not appear to us that the said question is of any particular substance inasmuch as the principles to be followed in exercising power u/s 34 are well settled. The real contention is that in this particular case such principles were misapplied.

7. In that view we make no order in this application. There will be no order as to costs.

Ajit K. Sengupta, J.

I agree.

No order made on application.