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COMMISSIONER OF INCOME TAX, BIHAR, PATNA

v.

AMAR SINGH GOWAMAL & SONS, JHARIA, DHANBAD

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JULY 17, 1986.

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

*Income Tax Act 1961, s. 184/26A—Registration of firm—Registration—Whether ensures for every subsequent year.*

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The respondent-assessee firm was registered in 1945 under the Indian Income Tax, 1922. The registration was up to the assessment year 1961-62. On 8th November, 1961, the last day of the previous year relevant to the assessment year 1962-63, there was a change in the constitution of the firm. From November 9, 1961, a new instrument of partnership came into existence. On September 29, 1962 the respondent-assessee firm applied for registration in Form 11A under the Income Tax Act, 1961. The Income Tax Officer refused registration on the ground that the case fell under section 184(7) of the Act. The Tribunal upheld the order of the Income Tax Officer.

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The High Court in a reference made by the Tribunal under Section 256(1) of the Act, held that on the date of application, the constitution of the assessee firm had changed and that the application was for registration of the firm which was in existence throughout the length of the previous year in relation to the first assessment under the Act of 1961 and that being so, in accordance with Rule 22(4)(ii) of the Income Tax Rules, the application filed in Form 11-A was a good and valid application.

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The High Court in a reference made by the Tribunal under Section 256(1) of the Act, held that on the date of application, the constitution of the assessee firm had changed and that the application was for registration of the firm which was in existence throughout the length of the previous year in relation to the first assessment under the Act of 1961 and that being so, in accordance with Rule 22(4)(ii) of the Income Tax Rules, the application filed in Form 11-A was a good and valid application.

Dismissing the appeal by the revenue, this Court,

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HELD: 1. The High Court was right in holding that the application filed in Form 11-A was a good and valid application. [313C-D]

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2.1 Section 26A of the 1922 Act dealt with the procedure in registration of the firm. Under the provision, application might 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 purpose of that Act and of any enactment for the time being in force either relating to income-tax or super-tax. The application was required to be made by such person or persons and was required to contain such particulars and had to be in such form and was required to be verified in such manner as had been prescribed. It was thereafter required to be dealt with by the Income-tax Officer, in the manner prescribed. [311G-H; 312A-B]

The Act of 1922 contained power for the Central Board to make rules under the said Act. Rule 2(a)(i) of said Rules required the filing of an application for registration within a period of six months of the constitution of the firm whichever was earlier or in any other case before the end of the previous year, as was required by clause (ii). Application for renewal of registration under rule 6 had to be filed before the 30th day of June of a particular assessment year. [312B-C]

2.2 There were two types of forms given in form I which was the form of application for registration of the firm under section 26A of 1922 Act. One was an application for registration simpliciter where there was no registration but when the firm as constituted on the date of the application was different from the one whose income was under assessment then in schedule (B) of the form particulars of the apportionment of income, profits or gains or loss of the business in the previous year, between the partners who were entitled to shares in such income, profits or gains or loss had to be given. The form of the renewal application was appended to rule (6). [312C-E]

2.3 Under the 1922 Act both the forms were meant for the purpose of first registration of the firm and not renewal, but the form of renewal appended to rule 6 was different. Essentially, similar is the position under the 1961 Act. Chapter XVI of the 1961 Act deals with that position. Section 182 of the Act deals with assessment of registered firms, and section 184 of the Act deals with application for registration of firm. Sub-section (4) of Section 184 stipulates that the application should be made before the end of the previous year for the assessment in respect of which registration was sought. The Income-tax Officer had power to entertain application even after the end of the previous year. [312G-H; 313A-B]

2.4 The scheme for renewal under 1961 Act was different from the one under the 1922 Act in one significant aspect, while under 1922 Act the application for registration meant application for registration

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A for every year and if granted it was valid for one assessment year but under 1961 Act once registration is granted, such registration enures for every subsequent year, if certain requirements are fulfilled. Such requirements are provided in sub-section (7) of section 184 of the Act. [313B-C]

B 2.5 It is apparent from relevant provisions of the two Acts that registration granted under 1922 Act cannot have effect of continuing the registration for the assessment year 1962-63 where 1961 Act would apply. For that year an application for registration of the firm has to be made under section 184(1) of the 1961 Act, and the fact of such registration noted under sub-section (4) of section 185 of the Act. Sub-section (7) would not come into effect at that time. It would come into effect for the subsequent assessment year 1963-64. [313D-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1912 (NT) of 1974

D From the Judgment and Order dated 23rd November, 1973 of the Patna High Court in Tax Case No. 46 of 1969.

S.C. Manchanda, K.P. Bhatnagar and Miss A. Subhashini for the Appellant.

E The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal from the decision and judgment of the High Court of Patna dated 23rd November, 1973. The appeal is by certificate from the High Court under section 261 of the Income Tax Act, 1961, hereinafter called the 'Act'. The assessee firm was registered in 1945 under the Indian Income Tax Act, 1922. The registration was upto the assessment year 1961-62. There was a change in the constitution of the firm on the last day of the previous year relevant to the assessment year 1962-63 on 8th November, 1961. From November 9, 1961, a new instrument of partnership came into existence. On September 29, 1962, the firm applied for registration under the Act in Form 11A. The Income-tax Officer refused registration on the ground that the case fell under section 184(7) of the Act. The Tribunal, thereafter upheld the order of the Income-tax Officer. There was a reference to the High Court. It was held by the High Court that the application was filed in September, 1962. On that date the constitution of the firm had changed. The

application for registration under the 1961 Act was for registration of the firm which was in existence throughout the length of the previous year in relation to the first assessment year under the Act of 1961. That being so, in accordance with rule 22(4)(ii), Income Tax Rules, the application filed in Form 11A was a good and valid application.

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The High Court, further, observed that the scheme of renewal of registration under the Act of 1961 was different from the one that obtained under 1922 Act. Under the Act of 1922, application for renewal of registration meant application for registration every year and had the effect of registering the firm every year. Under the Act of 1961 when once registration was granted under the Act of 1922 to any firm for any assessment year it enured for subsequent years also unless there was a change in the constitution of the firm. A registration granted under the Act of 1922 would not have the effect of continuing the registration for the assessment year 1962-63 to which the Act of 1961 became applicable. For that year an application for registration had to be made for the purposes of the Act of 1961 in accordance with section 184(1) and the fact that the registration under the Act had got to be noted under sub-section (4) of section 185 of the Act. A renewal of registration granted under the Act of 1922 is not a "recognition granted" or "order issued" within the meaning of section 297(2)(k) of the 1961 Act and was, therefore, not saved by the provisions of that section.

The question that was referred by the Tribunal to the High Court under section 256(1) of the Act was as follows:

"Was the application for registration made in Form No. 11A on 29th September, 1962 validly refused?"

The question of registration of the firm under the relevant Income Tax Acts was dealt with under section 26A of 1922 Act. Section 26 of the 1922 Act dealt with the change in the constitution of a firm, as neither the revenue authorities nor the High Court has proceeded on any question of the constitution of the firm, it is not necessary for the present purpose to deal with that. Section 26A of the 1922 Act dealt with the procedure in registration of the firm. Under the provision, application might 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 purpose of that

- A Act and of any enactment for the time being in force either relating to income-tax or super-tax. The application was required to be made by such person or persons and was required to contain such particulars and had to be in such form and was required to be verified in such manner as had been prescribed. It was thereafter required to be dealt with by the Income-tax Officer in the manner prescribed. The Act of 1922 contained power for the Central Board to make rules under the said Act. Rule 2(a)(i) of said Rules required the filing of an application for registration within a period of six months of the constitution of the firm or before the end of the previous year of the firm whichever was earlier or in any other case before the end of the previous year, as was required by clause (ii). Application for renewal of registration under rule 6 had to be filed before the 30th day of June of a particular assessment year. There were two types of forms given in form I which was the form of application for registration of the firm under section 26A of 1922 Act. One was an application for registration simpliciter where there was no registration but when the firm as constituted on the date of the application was different from the one whose income was under assessment then in schedule (B) of the form particulars of the apportionment of income, profits or gains or loss of the business in the previous years, between the partners who were entitled to shares in such income, profits or gains or loss had to be given. The form of the renewal application was appended to rule (6). It might be noted that the Central Board of Direct Taxes had extended the time for registration during the transitional period after coming into operation of the Act of 1961, upto 30th September, 1962. It would thus be seen that when the application was filed it was in time, it was not necessary to fill up the two schedules but if the application was filed for the first registration of the firm, which was in existence in the previous year at a point of time when the firm was reconstituted then the particulars of both kinds had to be given. But the assessment on the newly constituted firm on the date as it was constituted at the time of assessment could be made when it was found that the firm as constituted was different from the one which had earned the profit in the previous year.
- G It is apparent, therefore, that under the 1922 Act both the forms were meant for the purpose of first registration of the firm and not renewal, but the form of renewal appended to rule 6 was different. Essentially, similar is the position under the 1961 Act. Chapter XVI of the Act deals with that position. Section 182 of the Act deals with assessment of registered firms, and section 184 of the Act deals with application for registration of firm. Sub-section (4) of section 184
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stipulates that the application should be made before the end of the previous year for the assessment in respect of which registration was sought. The Income-tax Officer had power to entertain application even after the end of the previous year. The basic point that has to be borne in mind in this case is that the scheme for renewal under 1961 Act was different from one under the two Acts in one significant aspect, while under 1922 Act the application for registration meant application for registration for every year—and if granted it was valid for one assessment year but under 1961 Act, once registration is granted, such registration enures for every subsequent year, if certain requirements are fulfilled. Such requirements are as provided in sub-section (7) of section 184 of the Act. Such procedure, it seems to us, has been substantially complied with. The question which the High Court posed before it was whether the application filed on 29th September, 1961 in Form 11A was a good application in accordance with 1961 Act and the rules framed thereunder or whether it was a case of continuance of the registration granted under 1922 Act within the meaning of sub-section (7) of section 184 of the Act. It is apparent from relevant provisions of the two Acts that registration granted under 1922 Act cannot have effect of continuing the registration for the assessment year 1962-63 where 1961 Act would apply. For that year an application for registration of the firm has to be made under section 184 (1) of 1961 Act, and the fact of such registration noted under sub-section (4) of section 185 of the Act. Sub-section (7) would not come into effect at that time, it would come into effect for the subsequent assessment year 1963-64. In the instant case, the application was filed in September, 1962—on that date the constitution of the firm had changed—the application for registration under 1961 Act was for registration of the firm which was in existence throughout the length of the previous year in relation to the first assessment under 1961 Act. That was in accordance with rule 22(4)(ii) of the Rules and the application filed in Form 11A was a good and valid application. The High Court so held. We agree. The other aspect—whether section 297(2)(k) of 1961 Act was applicable, was also discussed by the High Court but it is not necessary to refer to it in the view, we have taken.

In any view of the matter in the facts of this case and in view of so-called alleged defects in the application, according to the Income-tax Officer, the Income-tax Officer under sub-section (2) of section 185 of the Act should have given an opportunity to the firm, and in not having done so, did not act validly and the rejection of the application

A was invalid. The question referred to the High Court was rightly answered in the negative. The appeal fails and is dismissed. Since the other side was not represented here, there will be no order as to costs.

B M.L.A.

Appeal dismissed.