

Punjab-Haryana High Court

Commissioner Of Income-Tax vs National Spinning And Weaving ... on 10 January, 1989

Equivalent citations: 1989 180 ITR 178 P H

Author: G C Mital

Bench: G C Mital, S Sodhi

JUDGMENT Gokal Chand Mital, J.

1. For the assessment year 1973-74, we have just now decided the questions referred to us regarding the same assessee in Income-tax Reference No. 110 of 1980 ([1989] 179 ITR 108) and have held that the application in Form No. 11 for registration of the firm was time-barred and that the assessee had not furnished any sufficient cause for condonation of delay. This has to be kept in view while deciding the referred questions for the subsequent assessment year, namely, 1974-75, which arises in the reference in hand.

2. For the assessment year 1974-75, the assessee initially filed an application in Form No. 12 for renewal of registration of the firm and later on filed an application in Form No. 11 for granting fresh registration to the firm. Both the forms were filed beyond the period of limitation. While no explanation was furnished for the delay in filing Form No. 12, cause was furnished for the delay in filing Form No. 11. The Income-tax Officer and the Appellate Assistant Commissioner were not satisfied with the explanation furnished for late filing of Form No. 11, but the Income-tax Appellate Tribunal, Amritsar, considered the explanation to be satisfactory and condoned the delay. Regarding Form No. 12, the Tribunal observed that since for the previous assessment year registration was refused, the assessee could not press for renewal of the registration in Form No. 12. As a result of the order of the Tribunal, the matter was restored to the file of the Income-tax Officer with a direction that he will consider Form No. 11 and if he is satisfied with all other conditions thereof, then he will grant registration. Against the aforesaid order of the Tribunal, the Department has got the following two questions referred for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in condoning the delay in filing the application in Form No. 11 when, admittedly, there was no explanation for the delay in filing the declaration in Form No. 12 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in restoring the matter to the file of the Income-tax Officer for consideration of the assessee's application in Form No. 11 afresh according to its directions ?"

3. We have gone through the order of the Tribunal. No cause is made out to interfere with the discretion exercised by the Tribunal in accepting the explanation furnished by the assessee for condonation of the delay in filing Form No. 11. It is largely a question of fact and hardly any question of law arises for the opinion of this court. In view of the above, we are of the opinion that the Tribunal was right in condoning the delay in filing the application in Form No. 11. Since we have declined registration to the assessee-firm for the preceding year in Income-tax Reference No. 110 of 1980 (see [1989] 179 ITR 108 (P & H)) by our order passed separately, the question of consideration of the application in Form, No. 12 and the lapse on the part of the assessee in not furnishing any

explanation for the delay in filing that form does not arise. Accordingly, we answer question No. 1 in favour of the assessee, that is, in the affirmative, in regard to Form No. 11 with the observation that consideration of Form No. 12 is beside the point on the given facts. In view of our answer to question No, 1, question No. 2 has necessarily to be answered in favour of the assessee again in the affirmative to the effect that the Tribunal was right in restoring the matter to the file of the Income-tax Officer for consideration of the application in Form No. 11 afresh and we order accordingly.

4. The parties are left to bear their own costs.