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Court : Kolkata

Decided On : Jun-09-1943

Reported in : [1944]12ITR430(Cal)

Appellant : Baijnath Bajoria, in Re.

Judgement :

GENTLE, J. - The applicant, Baijnath Bajoria, applied for registration of his firm on August 24, 1940. The Income-tax Officer refused registration. The assessee carried and on December 23, 1940, directed registration. On January 21, 1941, the Commissioner of Income-tax, purporting to act under the provisions of Section 33 (1) of the Income-tax Act in force at the time, called for the records of the proceedings relevant to the registration of the firm. On February 21, 1941, obviously with the intention of exercising his revisional jurisdiction, subject to what representations might be made on behalf of the assessee, the Commissioner directed notice to be given to him. On March 3, 1941, the assessee appeared through learned Advocate. Finally on April 17, 1941, the Commissioner passed an order which in effect, reversed the order of the Appellate Assistant Commissioner and restored the decision of the Income-tax Officer who had refused registration.

The relevant matters which transpired during the period covered by the facts related above are that on January 18, 1941, there was a notification that on January 25, 1941, Part II of the Income-tax (Amendment) Act of 1939 would come into force. The effect of that Act coming into force was that the Commissioners powers in revision under section 33 (1) disappeared and other powers, to which reference is made to this Court thus arise. That question is as follows :-

'Whether in the facts and circumstances of the case the Commissioner was empowered in law to set aside the Appellate Assistant Commissioners order in view of the fact that Part II of the Indian Income-tax (Amendment) Act had come into force with effect from 25th January 1941 ?'

There is a second question to which no answer is sought either by the assessee applicant or by the Commissioner and reference to it is not necessary.

Section 33 of the Income-tax Act, as it appeared before January 25, 1941, was as follows :-

'(1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him.......

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.'

This section disappeared of January 25, 1941. It was however if force on January 21, 1941, when the Commissioner called for the records. Although it does not appear in the case, it has been stated and accepted that the records in fact arrived on February 5, 1941.

It is argued on behalf of the assessee that since the powers of the Commissioner under Section 33 (1) had gone by the time the records arrived and when he gave consideration to them, the Commissioner had no authority to pass any order and the order which he had passed is null and void.

The sole question for decision is whether the calling for the records which the Commissioner is empowered to do under Section 33 (1) is a proceeding.

Section 14 of the Income-tax (Amendment) Act of 1940 provides :

'Notwithstanding the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939....

(b) all proceedings then pending before the Commissioner in connection with the exercise of his powers of revision under Section 33. ..... may be continued and disposed of as if the said Part II had not come into force.'

On behalf of the assessee it is argued that there was no proceeding by or on behalf of the Commissioner until the records had reached him in response to his call and he had given consideration or disposal to them. Consequently, it was contended that since there was no proceeding until that period arrived, which was after January 25, 1941, when Part II of the 1939 Act had come into force, the provisions of Section 14 of the Act of 1940 did not save the Commissioner and he did not thereby retain in his disposition any power in respect of the assessees matter.

Section 14 does not refers to jurisdiction or judicial consideration. What it does provide is that all proceedings pending before the Commissioner in connection with the exercise of his powers of revision, before the date when Part II of the 1939 Act came into force, shall save to him the effect of Section 33 (1). Section 33 gives the Commissioner more than one power. Firstly he has the power to call for the records of the proceedings and secondly on receipt of those records, when of course they will be examined, he may make such inquiry or cause such inquiry to be made and may pass an order; but he must not pass an order adverse to the assessee without giving him an opportunity of being heard. The first power which the Commissioner must exercise is to call for the records, and Section 14 of the 1940 Act refers to proceedings pending in connection with the exercise of the Commissioners powers of revision under Section 33. Unless and until the Commissioner call for the records he will never be in a position to consider the particular case, the subject of the records. When he does call for the records it is with the intention of giving consideration to the matter and in my view, from that time there is a tendency of proceedings and the proceedings are those which were commenced by the Commissioner calling for the records. There is no reference, as I mentioned earlier, in Section 14 of the 1940 Act to judicial proceedings or proceedings of that nature. The proceedings, the tendency of which prevent the application of Part II of the 1939 Act, are proceedings in connection with the exercise of powers by the Commissioner under Section 33 (1). Directly he has exercised one of his powers under that section, including the first powers, by calling for the records there must be, in my view, a tendency of the proceedings.

For these reasons I am of the opinion that the answer to the first question which alone requires consideration should be in the affirmative.

No order as to costs.

DERBYSHIRE, C.J. - I agree.

Reference answered accordingly.