

A

SIR HUKUMCHAND & MANNALAL CO.

v.

**COMMISSIONER OF INCOME-TAX,
MADHYA PRADESH**

January 4, 1966

B

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Income-tax Act (11 of 1922), s. 26A and Income-tax Rules, rr. 6A and 6B—Order of cancellation under r. 6B—If appealable.

C

The Income-tax Officer cancelled the certificate of renewal of registration of the appellant-firm, under r. 6B of the Income-tax Rules, on the ground that the firm was not a genuine one. The Appellate Assistant Commissioner, the Tribunal and the High Court on reference, held that no appeal lay against the order of the Income-tax Officer to the Appellate Assistant Commissioner under s. 30(1) of the Income-tax Act, 1922.

In appeal to this Court,

D

HELD: The words "refusal to register a firm" in s. 30 are wide enough to take in the orders made under rr. 6A and 6B refusing to renew registration and also cancelling the certificate so renewed, and such an order directly attracts the appellate jurisdiction conferred on the Appellate Assistant Commissioner under the section. [196 E; 197 F]

E

The fact that s. 30 provides for an appeal separately against the orders under s. 23 (4) either refusing to register a firm or cancelling the registration of a firm, but provides in the context of s. 26A, for an appeal only against an order refusing to register the firm, does not affect this construction of s. 30, because, when s. 30 provides for an appeal against the orders under s. 23(4), it has merely incorporated the two forms of orders embodied in s. 23(4), and, when it provides for an appeal against the order under s. 26A, it has used a general word, for the nature of the order under s. 26A is not described but is left to be prescribed under the Rules. The application under s. 26A made to the Income-tax Officer on behalf of a firm for registration for the purposes of the Act, will be disposed of in the manner prescribed by rr. 6A and 6B. Under these Rules, the Income-tax Officer is authorised to make three kinds of orders, namely, (i) he can refuse to renew the registration; (ii) he can register; and (iii) he can cancel the renewal if he is satisfied that a renewal was obtained without there being a genuine firm in existence. But the three kinds of orders, having regard to the circumstances of each case, will be made only on an application for renewal of registration, because, the Rules do not provide for independent proceedings to the cancellation of the renewed certificate. When the Income-tax Officer cancels a renewed certificate, he sets aside his earlier order and refuses a renewal, with the result that, an order of refusal to renew a certificate and the order cancelling the renewed certificate are given the same effect, namely, refusal of the application to register. It follows that the order cancelling registration is nothing more than refusing to renew the certificate of registration. [196 A-E; 197 C-E]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 223 of 1965.

H

Appeal from the judgment and order dated February 23, 1962 of the Madhya Pradesh High Court in Misc. Civil Case No. 165 of 1961.

N. A. Palkhivala, S. T. Desai, T.A. Ramachandran, J. B. Dadachanji, for the appellant. A

A. V. Viswanatha Sastri, R. H. Dhebar, N. D. Karkhanis and R. N. Sachthey, for the respondent.

The judgment of the Court was delivered by B

Subba Rao, J. This appeal, on a certificate granted by the Madhya Pradesh High Court, raises the question whether an appeal lies under s. 30(1) of the Indian Income-tax Act, 1922, hereinafter called the Act, to the Appellate Assistant Commissioner against the order of an Income-tax Officer cancelling an order granting registration of a firm under s. 26-A of the Act. C

The facts material for the said question may be briefly stated. The appellant is a firm constituted under a deed of partnership dated July 16, 1948. The Income-tax Officer registered the said firm under s. 26-A of the Act for the year 1950-51. The registration was renewed for the years 1951-52 and 1952-53. On November 30, 1957, the Income-tax Officer renewed the registration for the assessment year 1953-54. On March 6, 1959, on the ground that the firm was not a genuine one, the said officer cancelled the registration under Rule 6-B of the Income-tax Rules. The appellant preferred an appeal against that order to the Appellate Assistant Commissioner, Indore. On July 15, 1959, the said Assistant Commissioner rejected the appeal for the reason that no appeal lay against the order of the Income-tax Officer cancelling the registration. The appeal filed by the appellant against that order to the Income-tax Appellate Tribunal, Bombay, was dismissed. At the instance of the appellant, the following question was referred to the High Court under s. 66(1) of the Act: D

“Whether on the facts and circumstances of the case, the order passed by the Income-tax Officer under Rule 6-B of the Indian Income-tax Rules cancelling the certificate of renewal of registration granted to the assessee is appealable under section 30 of the Income-tax Act.” E

A Division Bench of the High Court of Madhya Pradesh answered the reference against the appellant. It held that no appeal lay under s. 30 of the Act against the order of the Income-tax Officer cancelling registration to the Appellate Assistant Commissioner. Hence the appeal. F

H

A The only question in this appeal is, whether an order cancelling the certificate of renewal of registration made under s. 26-A of the Act by an Income-tax Officer is subject to an appeal under s. 30(1) to the Appellate Assistant Commissioner. At the outset, the relevant provisions may be usefully read :

B *Section 26-A.* (1) Application may 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 purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

C (2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

D *Rule 6.* Any firm to whom a certificate of registration has been granted under Rule 4 may apply to the Income-tax Officer to have the certificate of registration renewed for a subsequent year.....

E *Rule 6-A.* On receipt of an application under Rule 6 the Income-tax Officer may, if he is satisfied that the application is in order and that there is or was a firm in existence constituted as shown in the Instrument of Partnership, grant to the assessee a certificate signed and dated by him in the following form :—

F

Rule 6-B. In the event of the Income-tax Officer being satisfied that the certificate granted under Rule 4, or under Rule 6-A, has been obtained without there being a genuine firm in existence, he may cancel the certificate so granted.

G

Section 30. (1) Any assessee.....objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 23 or to a refusal to register a firm under sub-section (4) of section 23 or section 26-A.....may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order.”

H

The gist of the said provisions relevant to the present enquiry may be stated thus : Under s. 26-A of the Act an application may be made to the Income-tax Officer on behalf of a firm for registration for the purposes of the Act. Such an application has to be filed and disposed of in the manner prescribed in the Act. Under the Rules, an application for the renewal of registration of a firm which has already been registered in the previous years has to be filed before the Income-tax Officer. That application will be disposed of in the manner prescribed by Rules 6-A and 6-B. Under those rules, the Income-tax Officer is authorized to make three kinds of orders, viz., (i) he can refuse to renew the registration of the firm; (ii) he can register the firm; and (iii) he can cancel the renewal of registration if he is satisfied that the renewal has been obtained without there being a genuine firm in existence. The crucial point to be noticed is that the said three kinds of orders, having regard to the circumstances of each case, will be made only in the application for renewal of registration. The Rules do not provide for independent proceedings for the cancellation of the renewed certificate. In effect, the Income-tax Officer, after setting aside his earlier wrong order made under a misapprehension, refuses renewal of the certificate of registration. If so, it follows that the order cancelling registration is nothing more than refusing to renew the certificate of registration. If that be the construction of an order made cancelling the certificate renewed, such an order directly attracts the appellate jurisdiction conferred on the Appellate Assistant Commissioner under s. 30 of the Act.

But Mr. Viswanatha Sastry for the Revenue contended that there was internal evidence in s. 30 of the Act itself to show that such a construction was not possible. He further argued that under the Income-tax law there was no scope for equitable considerations, and under the express provisions of s. 30 no appeal lay against the order of the Income-tax Officer cancelling the certificate of registration. In support of his contention he relied upon that part of s. 30 of the Act which we have extracted earlier and contended that when the Legislature in the context of the orders made under s. 23(4) spoke separately of the order of cancellation of registration of a firm and an order refusing to register a firm and in the same section, in the context of s. 26-A, it mentioned only refusal to register a firm, it clearly expressed its mind that in the former case an appeal would lie against both the orders, whereas in the latter case an appeal would lie only against one of the orders. There is some force in this argument. But a

A careful reading of the provisions of s. 23(4) and s. 26-A brings out the difference in the phraseology used in s. 30 in the matter of appeals against orders made under the said two sections. The relevant parts of s. 23(4) and s. 26-A(2) may be placed in juxtaposition :

B	Section 23(4)	Section 26-A(2)
the income-tax Officer....in the case of a firm, may refuse to register it or may cancel its registration if it is already registered.	The application shall be.....dealt with by the Income-tax Officer in such manner as may be prescribed.
	

C A comparative study of the relevant parts of these two provisions at once shows the distinction between the two. Under s. 23(4) while the Income-tax Officer can make an order refusing to register a firm or may cancel the registration if it is already registered, under s. 26-A(2) he can only make an order in such manner as may be prescribed. The manner prescribed, as we have already indicated earlier, provides for three different kinds of orders to be made in the same application with the result that an order of refusal to renew a certificate and the order cancelling the certificate renewed are given the same effect, namely, refusal of the application to register. That apart, when s. 30 provides for an appeal against the orders under s. 23(4) and also against orders under s. 26-A, it has incorporated the two forms of orders embodied in s. 23(4) and used a general word in providing an appeal against an order under s. 26-A, for the nature of order is not described but left to be prescribed under the Rules.

F If so, it follows that the words "refusal to register a firm" in s. 30 of the Act are wide enough to take in the orders made under rr. 6-A and 6-B refusing to renew the registration and also cancelling the certificate so renewed.

G By so holding we are not unaware that equity has no place in construing the provisions of the Income-tax Act. Indeed, we have not introduced any equitable consideration in the matter of construction. We have come to the conclusion on a fair reading of the relevant provisions of the Act and the Rules made thereunder.

H In the result, we answer the question propounded for the High Court's decision in the affirmative. The order of the High Court is set aside and the appeal is allowed with costs.

Appeal allowed.