

Rickabchand Chimnaji Vs. Second Income-tax Officer, City Circle, Bangalore and ors.

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Court : Karnataka

Decided On : Aug-08-1962

Reported in : [1964]52ITR141(KAR); [1964]52ITR141(Karn)

Judge : Ahmed and ;K.S. Hegde, JJ.

Acts : [Income Tax Act, 1922](#) - Sections 14(2)(C)

Appeal No. : Writ Petition No. 1304 of 1961

Appellant : Rickabchand Chimnaji

Respondent : Second Income-tax Officer, City Circle, Bangalore and ors.

Advocate for Def. : D.M. Chandrasekhar, Adv.

Advocate for Pet/Ap. : S.C. Javali, Adv.

Judgement :

1. On the admitted facts, the impugned order is clearly illegal. The petitioner and respondents Nos. 3 and 4 applied to the first respondent to register the firm known as 'Messrs. Porwal Silk House' claiming that they were the partners of that firm. Their application under section 26A of the Indian Income-tax Act, 1922, was rejected on the ground that the alleged firm had no real existence. After holding that the firm did not exist, the first respondent proceeded to assess the petitioner on the basis of a return submitted by the fourth respondent purporting to act on behalf of the alleged firm. Admittedly, the petitioner had not submitted any return nor was the petitioner asked to submit any return. The return submitted by one partner of a firm could be considered as a return submitted by the other partners if the firm really exists. But, as mentioned earlier, the first respondent has come to a positive conclusion that the firm in question has no real existence. Therefore, the act of the fourth respondent in submitting the return cannot be considered as the act of the petitioner. The petitioner could not have been assessed without giving notice to him and giving him an opportunity to put forward his case. In truth, what has happened in this case is that the petitioner has been assessed on the basis of a return submitted by a stranger, though that stranger claimed to be a partner of the petitioner.

2. For the reasons mentioned above the impugned order of assessment and the consequent demand notice, in so far as it relates to the petitioner cannot be sustained, and the same is hereby quashed. It will be open to the authorities to take fresh steps against the petitioner according to law. The first respondent should pay the costs of the petitioner. Advocate's fee Rs. 100.

3. Sri Javali, the learned counsel for the petitioner, submits that in pursuance of the order of this court, the petitioner has deposited half the tax amount. If any amount has been deposited by the petitioner in pursuance of the order of assessment, the same will be refunded to the petitioner and the security bond executed by him for the balance amount will stand cancelled.

4. Petition allowed.

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