in the judgment. The mere marking of an exhibit does not dispense with the proof of documents."

(21) Thus, no reliance can be placed on *Dogar Mal's case* (supra) for the proposition that since Ex. R. 1 has been exhibited its formal proof stands dispensed with and no objection to its admissibility can be taken in appeal.

(22) Question No. (3) is, therefore, answered in the affirmative.

(23) In all fairness to the learned counsel for the insurer it may be mentioned that he placed strong reliance on the Supreme Court judgment in *National Insurance Co. Ltd.* v. *Jugal Kishore and others,* (10), and in particular on the following observations :—

"Before dealing with the submission we may point out that the policy under which the bus aforesaid was insured had not been filed either before the Tribunal or before the High Court. A photostat copy of the policy has, however, been filed in this Court and learned counsel for the respondents did not have objection in the same being admitted in evidence."

(24) It is difficult to understand how these observations could be of any help to the insurer. The counsel for the respondents therein had no objection to the admission in evidence of the photostat copy of the policy of insurance. That is certainly not the case here.

(25) In view of the questions of law having been answered above, this appeal will now go back to the learned Single Judge for its decision on merits.

P.C.G.

(10) 1988 A.C.J. 270.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX (CENTRAL), LUDHIANA,—*Applicant.*

versus

M/S. NATIONAL SPNG. AND WEAVING MILLS,—*Respondents.*

Income Tax Reference No. 110 of 1980.

January 10, 1989.

Income Tax Act (XLIII of 1961)—*S.* 184—*Application for registration of firm filed beyond limitation—Application dismissed by I.T.O. as barred by time—Application for condonation of delay*

moved thereafter dismissed without affording opportunity of hearing to the assessee—Opportunity of hearing—Whether necessary.

Held, that S. 184(4) of the Income Tax Act, 1961 clearly provides the last date for filing of the application for registration and on sufficient cause being shown the time can be enlarged. Therefore, it is the duty of the assessee to file the application within time and in case it is out of time it is the duty of the assessee to show sufficient cause for condonation of delay and it is not the duty of the Income Tax Officer to call upon the assessee to furnish the explanation. This very rule is applicable in cases where applications for condonation of delay are required to be filed before the civil and criminal courts. There also, a duty is cast on the applicants to furnish the causes of delay and it is not the duty of the Court to call upon the applicant to furnish the explanation.

(Para 5).

Reference under Section 256(2) *of the Income-tax Act,* 1961, *arising out of Income Tax Appellate Tribunal's order dated* 31st *July,* 1979. *in I.T.A. No.* 761(*ASR*)/1977-78, *Assessment Year* 1973-74, *to refer the following questions of law to the Hon'ble High Court of Punjab and Haryana at Chandigarh, for its opinion* :—

1. *"Whether on the facts and in the circumstances of the case on a proper interpretation of the priviso to section* 184(4) *of the Income-tax Act,* 1961, *the Appellate Tribunal was right in law in holding that the Income-tax Officer was obliged to afford an opportunity of being heard to the assessee before rejecting the belated application in Form No.* 11 *even in the cases where no condonation application was made* ?

2. *Whether on the facts and in the circumstances of the Appellate Tribunal is right in law in setting aside the order of the AAC and resorting the matter to the file of the ITO for consideration of the matter afresh* ?"

[R.A. No. 168 (ASR)/1979].

Ashok Bhan, Sr. Advocate, with Ajay Mittal, Advocate, *for the applicant.*

Asutosh Mohanta, Advocate, *for respondents.*

JUDGMENT

Gokal Chand Mital, J.

(1) M/s National Spinning and Weaving Mills, Amritsar, for the assessment year 1973-74, the accounting year ended on 14th October, 1972, filed return of income on 5th May, 1973 along with

form No. 11 seeking registration of the firm. The Income Tax Officer,—*vide* order dated 16th February, 1976 assessed the firm as un-registered with the following observations :—

> "The assessee has not filed any petition for extention of time for filing this application and has not shown any sufficient cause which prevented it to file the application in proper form in time".

(2) Thereafter, on 4th December, 1976 the assessee filed an application for condonation of delay in filing form 11.

(3) The Appellate Assistant Commissioner considered the belated application for condonation of delay and found that no sufficient cause was shown by the assessee and endorsed the order of the Income Tax Officer. However, on further appeal to the Income Tax Appellate Tribunal, Amritsar, it was held in view of the judgment of Allahabad High Court in *C.I.T.* v. *Raghunandan Prasad Mohan Lal,* (1), that it was incumbent on the Income Tax Officer to give an opportunity to the assessee of being heard before rejecting form No. 11 filed by it on 5th May, 1973, and after setting aside the order, the matter was restored to the file of the Income Tax Officer for consideration of the matter afresh. At the instance of the Commissioner of Income Tax, the Tribunal referred the following questions for opinion of this Court :

> "1. Whether on the facts and in the circumstances of the case on a proper interpretation of the proviso to section 184(4) of the Income-tax Act, 1961, the Appellate Tribunal was right in law in holding that the Income-tax Officer was obliged to afford an opportunity of being heard to the assesee before rejecting the belated application in form No. 11 even in the cause where no condonation application was made ?
>
> 2. Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in law in setting aside the order of the AAC and restoring the matter to the file of the ITO for consideration of the matter afresh "

Section 184(4) of the Income Tax Act, 1961 (for short 'the Act'), provides that an application of the kind in question for registration

(1) (1974)97 I.T.R. 398.

has to be made before the end of the previous year for the assessment year in respect of which registration is sought, and the proviso to it enables the Income Tax Officer to entertain an application made after the end of the previous year, if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year. Therefore, it is clear that limitation for filing application is still the last date of the previous year which in this case would be 14th October, 1972, whereas application in form No. 11 for the purposes of registration was filed on 5th May, 1973, that is, more than six months after the last date and was clearly time barred. Every assessee is deemed to know the provision of law and ignorance of law is no excuse. Application for registration of a firm lies under Section 184 of the Act, and if that provision had been read, it would have been clear therefrom as to what was the last date for filing the application. Still there is jurisdiction with the Income Tax Officer to entertain the application after the end of the previous year if he is satisfied about the sufficient cause for the delay. In this case, no sufficient cause for the delay was shown either till 5th May, 1973 when the application for registration was filed or even till the order was made by the Income Tax Officer on 16th February, 1976 declaring it to be an un-registered firm. The assessee waited for more than 9 months after the aforesaid order in furnishing the cause which was not found to be satisfactory by the Commissioner of Income Tax. Even the Tribunal did not find the belated explanation as sufficient in condoning the delay. However, it was of the view that it was incumbent on the Income Tax Officer to have given an opportunity to the assessee of being heard before rejecting the registration, and this was in violation of the principles of natural justice. As already observed, support for this view was drawn from *Raghunandan Prasad Mohan Lal's case* (supra).

(4) As against the above view, the learned counsel for the Revenue has brought to our notice the view of three other High Courts taking view to the contrary, namely, *Pannalal Ram Kumar & Co.* v. *Income Tax Officer, City Circle II* (1) *Coimbatore* (2), *Kalinga Saw Mills* v. *Commissioner of Income-tax* (3), *Miss Motiram Pasumal* v. *Commissioner of Income-tax, M.P.I. Bhopal* (4). In

(2) (1970) 75 I.T.R. 309 (Madras).
(3) (1975) 99 I.T.R. 102 (Orissa).
(4) (1984) 145 I.T.R. 734 (M.P.)

Raghunandan Prasad Mohan Lal's case (supra), *Messers Haji Mohd. Khalil Mohd. Farooq* v. *Income-Tax Officer, Azamgarh* (5) a judgment by the same Court was followed and *Messers Haji Mohd. Kalil Mohd. Farooq's case* (supra), was disagreed in *Pannalal Ramkumar's case* (supra), and was not followed in *Kalinga Saw Mills's case* (supra). We have to see as to which view is to prevail.

(5) On a consideration of the matter, we are of the opinion that the view of law taken by the Madras, Orissa and M.P. High Courts is in consonance with the provisions of Section 184(4) of the Act, and also of general principles of law, which prevailed in civil and criminal Courts. Section 184(4) of the Act clearly provides the last date for filing of the application for registration, and on sufficient cause being shown the time can be enlarged. Therefore, it is the duty of the assessee to file the application within time and in case it is out of time it, is the duty of the assessee to show sufficient cause for condonation of delay and it is not the duty of the Income Tax Officer to call upon the assessee to furnish the explanation. This very rule is applicable in cases where applications for condonation of delay are required to be filed before the Civil and Criminal Courts. There also, a duty is cast on the applicants to furnish the causes of delay and it is not the duty of the Court to call upon the applicant to furnish the explanation. Accordingly, we agree with the view taken by the Madras, Orissa and M.P. High Courts, and disagree with the view of the Allahabad High Court in M/s *Hazi Mohd. Khalil Mohd. Farooq's case* (supra).

(6) In view of our aforesaid discussions, we answer question No. 1 in favour of the Revenue, that is in the negative.

(7) As a result of our decision on question No. 1, question No. 2 is necessarily to be decided in favour of the Revenue, in the negative, that is, the Tribunal was not right in law in setting aside the order of the Assistant Appellate Commissioner and restoring the matter to the file of the Income Tax Officer for consideration of the matter afresh. No costs.

P.C.G.

(5) (1962) XLVI I.T.R. 458.