(1987) 07 RAJ CK 0062

In the Rajasthan High Court

Case No : IT Reference No. 12 of 1984

Chanansingh Sodagar Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:
Income Tax Act, 1961 — Section 187, 188, 256(1)

Citation : (1987) 34 TAXMAN 127

Hon'ble Judges : J.S. Verma, C.J;Milap Chandra, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Appellant; B.R. Arora, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the income tax Act, 1961 (''the Act'') at the instance of the assessee to answer the following questions of law, namely: 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the firm was not dissolved on 12-1-1979, when one of the partners Shri Chanan Singh died?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was only a change in the constitution of the firm and that incomes of both the periods were liable to be clubbed in the hands of the firm, as it was constituted at the time of assessment?

The relevant assessment year is 1979-80. One of the nine partners of the firm died on 12-1-1979. The assessee filed two returns, one for the period ending on 12-1-1979 and other for the remaining period of the assessment year. The ITO took the view that it was merely a case of change in constitution of the old firm governed by section 187 of the Act and not a case of succession governed by section 188 of the Act. He, therefore, clubbed the income for the two periods and made one assessment for the entire period. The AAC, however, took the view that the firm stood dissolved and it upheld the assessee''s contention. The Tribunal, however, reversed the view of the AAC and held against the assessee.

Hence, this reference at the instance of the assessee to answer the above quoted questions of law.

2. Admittedly this is a case governed by sections 187 and 188 as they stand after insertion of the proviso in sub-section (2) of section 187 retrospectively with effect from 1-4-1975 by the Taxation Laws (Amendment) Act, 1984. This being so, it is a case of succession governed by section 188 on account of the fact that applicability of section 187 is excluded by virtue of the proviso to sub-section (2) of section 187--See Commissioner of Income Tax Vs. Kheta Sons and Co., . The view taken by the Tribunal was, therefore, not justified. Consequently, the reference is answered in favour of the assessee and against the revenue as under:

1. The Tribunal was not justified in holding that the firm was not dissolved on 12-1-1979 on the death of one of its partners.

2. The Tribunal was not justified in holding that there was only a change in the constitution of the firm and that income of both the periods were liable to be clubbed in the hands of the firm by treating it as a case governed by section 187 and not of succession governed by section 188.

No costs.

