(1997) 11 AHC CK 0020

In the Allahabad High Court

Case No : IT Ref No. 119 of 1982 5 November 1997 A.Y. 1976-77

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

ASHOK AUTO SERVICES — RESPONDENT

Date of Decision : 05-11-1997

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

Citation : (2000) 163 CTR 381

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Full Bench

Judgement

By the Court

At the instance of the revenue, the Tribunal referred the following question for the assessment year 1976-77 for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") :

"Whether, on the facts and in the circumstances of the case there should have been two separate assessments for the two periods in question, as claimed by the assessee, or one consolidated assessment for both the periods, as framed by the Income Tax Officer ?"

2. An affidavit of service was filed by the standing counsel which shows that that assessee was sufficiently served. None has put in appearance on behalf of the assessee and we have, therefore, heard only the standing counsel.

3. The facts, as found by the Tribunal, are that vide deed dated 15-4-1975, the assessee-firm was constituted in the name and style M/s Ashok Auto Service. It consisted of six partners. On 14-1-1976 (wrongly stated as 20-1-1976 in the Tribunal''s order), a dissolution deed came to be executed. On 15-1-1976, a fresh deed was got executed when a minor ceased to be a partner and four new partners were inducted.

On these facts, the assessing officer took the view that there was only a change in the constitution within the meaning of section 187 and he, therefore, made singleassessment for the entire accounting period relevant to the assessment year. On appeal, the Commissioner (Appeals) accepted the assessee''s submission that there was dissolution of the firm on 14-1-1976, and, therefore, two separate assessments for two different period should have been made. On further appeal, the Tribunal affirmed the order of the Commissioner (Appeals).

4. The controversy arising in this case is squarely covered by the decision of the Supreme Court in COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE., . In this case the court observed as under :

"Section 187 says that where, at the time of making an assessment, it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as it is constituted at the time of making the assessment. "Change in the constitution of the firm" is defined for the purpose. The relevant part of the definition states that if one or more of the partners cease to be partners in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change, there is a change in the constitution of the firm. "

5. From the facts as stated above, it is clear that on 15-1-1976, when a new deed was executed, some of the partners who carried on the business under the original deed dated 15-4-1975, continued to carry on the business and, therefore, the instant is a case of "change in the constitution only within the meaning of section 187 and not a case of succession within the meaning of section 188 of the Act."

The Tribunal was, therefore, not right in holding that there was dissolution requiring two separate assessments for two different periods.

We, therefore, answer the aforementioned question in the negative, that is, in favour of the revenue and against the assessee.