(1983) 09 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 1 of 1981

Commissioner of Income Tax APPELLANT

Vs

Chopda Trading Co. RESPONDENT

Date of Decision : 16-09-1983

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (1983) 37 CTR 243 : (1984) 146 ITR 583 : (1984) 17 TAXMAN 58

Hon'ble Judges : G.P. Singh, C.J;Faizan Uddin, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

G.P. Singh, C.J.—This is a reference made by the Income Tax Appellate Tribunal referring for our answer the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that no fresh partnership deed is necessary when a minor attains majority ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in setting aside the order of the Commissioner of Income Tax passed u/s 263 of the Income Tax Act, 1961 ?"

2. The facts, briefly stated, are that the assesses is a firm which was constituted by a deed of partnership dated 20th December, 1969. There were four partners in the firm and four minors were admitted to the benefits of partnership. Registration was granted for the assessment year 1973-74. The firm was also granted continuation of registration for the assessment years 1974-45 and 1975-76 by the ITO. One of the minors, namely, Kamal Chand, became major on 4th December, 1970. No fresh deed was executed on Kamal Chand''s attaining majority. The Commissioner revised the orders of the ITO granting continuation of registration for the assessment years 1974-75 and 1975-76 and set aside those orders. It was held by the Commissioner that because of the minor

attaining majority, there was a change in the constitution of the firm and that continuation registration could not be granted. The Tribunal, in appeal filed by the assessee, relied on certain circulars and held that continuation of registration could not be refused simply because one of the minors admitted to the benefits of the partnership became major and no fresh deed of partnership was executed.

3. The question as to when a firm in which certain minors are admitted to the benefits of the partnership may be granted continuation of registration when one or more minors became major has been decided by this court in Durgaprasad Rajaram Adatiya Vs. Commissioner of Income Tax, , GANESH RICE MILLS Vs. COMMISSIONER OF Income Tax, M.P., and CIT v. Durgaprasad Rajaram Adatiya (Misc. Civil Case No. 68 of 1980, decided on 8th April, 1983) (see p. 580 supra). The two circulars which are referred to by the Tribunal have been discussed by this court in Misc. Civil Case No. 68 of 1980. It has been held in this case that the circulars did not really direct anything contrary to what had already been held by this court in the two cases mentioned above. The correct view is that continuation of registration cannot be refused simply on the ground that a minor admitted to the benefits of the partnership has become a partner on attaining majority. But it can be refused on the ground that the eventuality of the minor becoming a partner on attaining majority was not foreseen in the deed of partnership and it does not provide for the distribution of profits and losses on the minor attaining majority. The Tribunal has not examined the questions from this point of view. The Tribunal will, therefore, re-examine the question in the light of the aforesaid decisions and the principle referred to above as also the terms of the partnership deed.

4. For the reasons given above, we answer the questions as follows :

"(1) & (2). The Tribunal will re-examine the question of continuation of registration and the validity of the order of the Commissioner in the light of the observations made above."

5. There will be no order as to costs of this reference.

