
(2005) 04 AHC CK 0003
In the Allahabad High Court
Case No : IT Ref. No. 49 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Gold Wheels

RESPONDENT

Date of Decision : 11-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 143, 144, 170, 187, 187(1)
Partnership Act, 1932 — Section 42

Citation : (2006) 203 CTR 486 : (2006) 150 TAXMAN 54

Hon'ble Judges : Rajes Kumar, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

1. The Tribunal has referred the following question of law u/s 256(1) of the IT Act, 1961 (hereinafter referred to as "the Act"), for opinion of this Court:

Whether, on the facts and in the circumstances of the case, and despite a provision in the partnership deed to the effect that the partnership would not stand dissolved on the death of a partner but shall continue with the remaining partners together with the heir(s) of the deceased partner, the Tribunal was legally justified in upholding the order of the learned CIT(A) to frame two separate assessments for the income of the two periods before and after the death of a partner ?

2. Brief facts of the case are as follows :

The assessee/opposite party (hereinafter referred to as "assessee") was a firm constituted vide partnership deed dt. 7th Jan., 1973 stood dissolved on account of death of Smt. Laxmi Bhasin and in her place her legal heirs, Channan Shah Bhasin and her grandson Puneet Shah joined the partnership firm. For the asst. yr, 1984-85, assessee filed two returns, one for the period 19th Jan., 1983 to 14th Dec., 1983 disclosing the total income of Rs. 11,620 and another for the period 17th Dec., 1983 to 6th Feb., 1984 disclosing the total income of Rs.

17,210, The ITO clubbed the income of both the periods and made one assessment for the entire period 19th Jan., 1983 to 6th Feb., 1984. The ITO was of the view that in view of Clause 10 of the original partnership deed, which was executed on 7th Jan., 1973, the firm did not dissolve on the death of partner and there was only change in the constitution of the firm u/s 187 of the Act. Appeal filed by the assessee was allowed by the CIT(A) and the direction was issued to make two assessments for the two separate periods. Revenue filed appeal before the Tribunal, which has been dismissed vide order dt. 30th May, 1994.

3. Heard Sri A.N. Mahajan, learned standing counsel for the Revenue. No one appears on behalf of the assessee.

4. Learned Counsel for the Revenue submitted that issue involved in the present case is covered by the decision of this Court in, the case of CIT v. Sri Sidh & Co. 2003 UPTC 461 . It is relevant to refer Clause 10 of the partnership deed executed on 7th Jan., 1973 which reads as follows :

That this partnership shall not be dissolved by the death of any of the partners. In the event of death of any of the partner his or her heir or heirs or anyone of the heir representing all the heirs shall be deemed to be substituted in place of the deceased partner until the heirs or heirs decide otherwise.

In view of the Clause 10 of the partnership deed, firm was not dissolved and continued with the change in the constitution.

5. Sections 187(1), 188 and Section 42 of the Partnership Act read as follows :

187. Change in constitution of a firm.-Where at the time of making an assessment u/s 143 or Section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment:

Provided that-

(i) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same;

(ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

188. Succession of one firm by another firm.-Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by Section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of Section 170.

42. Dissolution on the happening of certain contingencies.-Subject to contract between the partners a firm is dissolved-

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent.

6. Both the aforesaid Sections 187(1) and 188 of the Act came up for consideration before this Court in the case of Commissioner of Income Tax Vs. Basant Behari Gopal Behari and Company, . In the said case, it was found by the Tribunal that partnership deed provided that the partnership would not dissolve on the death of any partner and that there was no evidence to suggest that the partnership had actually stood dissolved on the death of a partner. On these facts, it has been held that there had been a change in the constitution of the partnership, on the death of one of the partners and only one assessment could be made. In the case of Commissioner of Income Tax Vs. Indralok Picture Palace, , the partnership deed provided that the death of a partner would not result in the dissolution of the firm. On the death of the partner, assessee filed two returns. The ITO was of the view that it was a case of reconstitution of the partnership and clubbed the income of both periods and made one assessment. This Court upheld the view of the ITO. Both the aforesaid cases have been noticed by the apex Court in the case of COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE., . In the said case, there was no provision in the partnership deed that the firm would not be dissolved on the death of the partner. On the death of one of the partners, firm stood dissolved and the surviving partners continued the business. The apex Court held that in the absence of any provision in the partnership firm that the partnership firm would not be dissolved, it stood dissolved. The apex Court held that in circumstances, it is not a case of Section 187 but case falls u/s 188 of the Act and two assessments should be made for two periods. Relying on the aforesaid decision of the apex Court, the Division Bench of this Court in the case of Sri Sidh & Co. (supra) held that in a case where in a partnership deed there is a clause that the firm would not be dissolved on the death of one of the partners, there has to be a single assessment and not two assessments. In view of the ratio laid down in the aforesaid cases it is held that on the facts of the present case, firm was not dissolved on the death of Smt. Laxmi Bhasin and there was only a change in the constitution u/s 187 of the Act and the provisions of Section 188 of the Act are not applicable and there has to be one assessment for both the periods.

7. For the reasons stated above, question referred is answered in negative, i.e., in favour of the Revenue and against the assessee. There shall be no order as to costs.