(1997) 09 AHC CK 0025

In the Allahabad High Court

Case No : IT Ref. No. 53 of 1982 24 September 1997 A. Y. 1977-78

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

GOVIND RAM and CO. — RESPONDENT

Date of Decision : 24-09-1997

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

Citation : (2000) 163 CTR 379

Hon'ble Judges : R.K. Gulati, J;O.P. Jain, J

Bench : Full Bench

Judgement

At the instance of the Commissioner, Allahabad, the Tribunal u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as `the Act''), has referred the following question for the opinion of this Court.

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the order of the learned Commissioner (Appeals) directing the Income Tax Officer not to club the incomes for the periods 5-11-1975, to 23-10-1976 and 24-10-1976 to 31-3-1977 and to assess the income separately ?"

2. We are concerned with the assessment year 1977-78. The firm consisted of six persons. On 23-10-1976, one of the partners Girdharilal retired. Thereafter, the firm was reconstituted with the remaining partners. The assessee submitted two returns of its income, one for the period 5-11-1975 to 3-10-1976, and the other for the period 24-10-1976 to 21-3-1977. The assessee claimed two separate assessments for the aforesaid period. However, the Income Tax Officer passed one assessment order covering the entire period of the previous year, relevant to the assessment year in dispute.

On an appeal the Commissioner (Appeals) accepted the claim of the assessee and directed that two separate assessments should be made, as claimed by the assessee. On further appeal to the Tribunal by the revenue, the order passed in appeal was upheld.

3. We have heard learned counsel for the parties. The question referred to this court is concluded by a decision of the Supreme Court in COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE., . The question for consideration is whether on facts it is a case of change in constitution of the firm within the meaning of section 187 of the Act, or, it was a case of succession of one firm by another. In the decision aforesaid, it was pointed out that the relevant part of the definition "change in the constitution of the firm" 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. In such an eventuality, one assessment is to be made on the firm as it is constituted on the date of assessment.

Applying the principle aforesaid on facts of the case on hand it was a case of change in the constitution of the firm. The Tribunal was, therefore, clearly wrong in taking the view that it was a case for two separate assessments for the two broken periods. On the contrary it was a case where one assessment was called for, as it was held by the Income Tax Officer.

In view of the above, question referred to this court is answered in the negative in favour of the revenue and against the assessee.

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