(1982) 12 AHC CK 0025

In the Allahabad High Court

Case No : Income-tax Reference No. 63 of 1981

Commissioner of Income Tax APPELLANT

Vs

Gupta Stores RESPONDENT

Date of Decision : 16-12-1982

Acts Referred:

Income Tax Act, 1961 — Section 188
Income Tax Act, 1961 — Section 188
Income Tax Act, 1961 — Section 188

Citation : (1983) 34 CTR 324 : (1983) 142 ITR 123 : (1983) 13 TAXMAN 305

Hon'ble Judges : R.S. Singh, J;H.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; A.K. Gupta, for the Respondent

Judgement

H.N. Seth. J.

1. The assessee, M/s. Gupta Stores, Katra, Allahabad, is a registered firm. Originally it was constituted by four partners including one Smt. Laxmi Devi who died on 26th October, 1976. Thereafter, the remaining partners carried on the business of the firm in the same name and style. For the assessment year 1977-78 the assessee filed two separate returns, one for the period April 1, 1976, to October 26, 1976, and the other for the period October 27, 1976, to March 31, 1977, and claimed that two separate assessments should be made for that year. The ITO rejected the claim of the assessee on the ground that as after the death of Sint. Laxmi Devi the remaining partners had continued the business as a going concern and had taken over all the assets and liabilities of the previous firm, it was a case where merely a change in the constitution of the firm had taken place and hence a single assessment for the entire period could be made. The view taken by the ITO was upheld in appeal by the AAC of Income Tax, Allahabad. Aggrieved the assessee went up in appeal before the Income Tax Appellate Tribunal, which referred to two Full Bench decisions of this court in the case of Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, and in the

case of BADRI NARAIN KASHI PRASAD Vs. ADDL. COMMISSIONER OF INCOME TAX. FANCY STORES v. COMMISSIONER OF INCOME TAX. R. C. GUPTA and SONS v. COMMISSIONER OF INCOME TAX. BENI PD. SIDGOPAL v. COMMISSIONER OF INCOME TAX., , and held that, in the circumstances of the case, this was not a case of reconstitution of the firm but a case of dissolution and succession. As such, the assessments for the two periods, as claimed by the assessee, had to be made separately. It accordingly allowed the appeal filed by the assessee.

2. At the instance of the Commissioner, the Appellate Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstance of the case, the Tribunal was legally justified in directing the ITO to make two separate assessments, one for the period of April 1, 1976, to October 26, 1976, and the other for the period of October 2, 1976, to March 31, 1977 ?"

3. From the perusal of the order of the Income Tax Appellate Tribunal it appears that it has proceeded on the footing that on the death of Smt. Laxmi Devi the firm as originally constituted had dissolved and that a new partnership firm had come into existence thereafter. In the case of Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, a Full Bench of this court by majority took the view that where a firm is dissolved and another firm takes over, it will be a case of succession governed by Section 188 of the I.T.. Act even though some of the partners of the two firms are common. In this case, since the erstwhile firm stood dissolved on the death of one of the partners, the petitioner-firm which took over the same business could be assessed only in accordance with Section 188 and a single assessment for the whole year was not valid. The view taken in the above case of Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, , is being consistently followed in this court and the latest case on the point is the case of Commissioner of Income Tax Vs. Satya Deo Omprakash, .

4. The learned counsel representing the Department has drawn our attention towards Dharam Pal Sat Dev Vs. Commissioner of Income Tax, and Nandlal Sohanlal, Jullundur Vs. The Commissioner of Income Tax, Patiala, , where, in similar circumstances, it has been held that such a case amounts to a re-constitution of the firm and a single assessment has to be made. However, we are bound by the Full Bench decision of our own court and the view taken from time to time by different Benches of this court. The ratio of the case of Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, , is fully applicable to the facts of the present case and we have no hesitation in holding that the Income Tax Appellate Tribunal was right in holding that, in the circumstances of the case, two separate assessments one for the period April 1, 1976, to October 26, 1976, and the other for the period October, 27, 1976, to March 31, 1977, had to be made and that it was justified in directing the ITO to make the assessments accordingly.

5. In the result, we answer the question referred to us in the affirmative and in

favour of the assessee, who is entitled for the costs of the reference assessed as Rs. 250.

6. While we are delivering judgment, learned counsel for the Commissioner submitted that as there is a conflict between the judicial opinions, on the point in controversy, as between this court and the Punjab and Haryana High Court, it is desirable that the said controversy should be finally resolved by the Supreme Court. He, therefore, prayed for the requisite certificate u/s 261 of the I.T. Act. Having considered the submission made by the learned counsel we are inclined to agree with it. We accordingly, certify that this case is a fit one for appeal to the Supreme Court.

