(1997) 04 PAT CK 0027

In the Patna High Court

Case No : Tax Case No. 88 of 1984 17 April 1997

COMMISSIONER OF INCOME TAX APPELLANT

Vs

HARI PRASAD UMASHANKAR RESPONDENT

Date of Decision : 17-04-1997

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

Citation : (2000) 113 TAXMAN 644

Hon'ble Judges : Prashanta Kumar Sarkar, J;Narboeshwar Pandey, J

Bench : Division Bench

Advocate : K.K. Vidyarthi, for the Appellant;

Judgement

The solitary question of law, which has been referred to this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), is reproduced hereunder:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that two assessments should be made on the firm of Hari Prasad Umashankar for the assessment year 1975-76 in regard to its income for two periods, viz., 25-10-1973 to 24-6-1974 and 28-6-1974 to 12-11-1974, falling in one accounting year, holding that it was not a case of change in constitution of the firm governed by the provisions of section 187 ?"

2. According to the applicant, this is a case of reconstitution of the firm in terms of the provisions of sub-sections (1) and (2) of section 187 of the Act, which, inter alia, provides that where at the time of assessment, it is found that a change had occurred regarding constitution of the firm, the assessment shall be made on the firm so constituted at the time of making of assessment. Therefore, according to him, this case squarely falls within the ambit of section thin the ambit of section 187.

3. It would appear that the learned Tribunal also by its final order on 27-7-1982 was of the view that this was a case of change in the constitution of the firm. But

having regard to a Full Bench decision of the Allahabad High Court 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., it was held that in case where there was a change in the constitution of firm, such a reconstitution of the firm becomes a distinct and different entity from the firm before its constitution and, therefore, two different assessment orders were required to be passed. Accordingly, the Income Tax Officer was directed to make a separate assessment for each of the two periods. But later on at the request of the revenue, the matter was referred to this court under the provisions of section 256(1) as noticed above.

4. It has been pointed out by the learned counsel that the aforementioned judgment of the Full Bench was later overruled by a larger Bench of the same court in the case of Vishwanath Seth Vs. Commissioner of Income Tax, and it was held that correct legal position in cases of reconstitution u/s 187 is that a firm retains its identity and continues and is assessable in respect of the income for the entire previous years.

5. In other words, where in the midst of accounting year there is a change in the constitution of firm in terms of section 187(2), the assessment is to be made as required under sub-section (1) of section 187 on the firm as constituted at the time of making assessment. In cases falling u/s 187, a single assessment is required to be made in respect of the income for the entire previous year, clubbing the income of both pre-change and post-change periods at one place. The aforesaid views was also followed recently by another Bench decision of the same court in the case of Commissioner of Income Tax Vs. Ramesh Biscuit Factory, .

6. In view of the facts, noticed above, since the decision of the Tribunal was based on the judgment of the earlier Full Bench decision of the Allahabad High Court, which has now been overruled by a subsequent decision of the same court, we set aside that part of the order of the respondent-authorities whereby it was held that there shall be two separate assessments for each of the two periods. We, therefore, hold that this case in falling u/s 187, a single assessment is required to be made.

7. Therefore, for the reasons, stated above, the authorities shall, therefore, proceed to make assessment in terms of the aforementioned judgment of the Allahabad High Court.

8. With the aforesaid findings this case is, thus, disposed of. But in the facts and circumstances of the case, there shall be no order as to costs.

