(1987) 03 RAJ CK 0047

In the Rajasthan High Court

Case No : Income Tax Ref. No. 21 of 1983

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

HARYANA TRADING CO. — RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:

Income Tax Act, 1961 — Section 187, 188, 256

Citation : (1987) 65 CTR 296

Judgement

By the Court - This reference is made under s. 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) at the instance of the Revenue to answer the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the firm stood dissolved on the death of Sh. Puranchand, (Partner) on 1-7-1978 and, therefore, two separate assessments should have been made for the two periods meaning thereby upto 2-7-1978 and for the period from 3-7-1978 to 1-11-1978 ?"

2. The relevant assessment year is 1979-80. Admittedly this is a case governed by s. 187 and 188 of the Act as they stand after insertion of the proviso in sub-s. (2) of s. 187 retrospectively w.e.f. 1-4-1975 by the Taxation Laws (Amendment) Act, 1984. On the facts and in the circumstances of this case, it is clearly a case of succession governed by s. 188 of the Act, since the applicability of s. 187 is excluded by virtue of the proviso to sub-s. (2) of s. 187. The view taken by the Tribunal that it is a case of succession governed by s. 188 requiring two separate assessments for the two periods during the assessment year, is justified.

3. Consequently, the reference is answered against the Revenue and in favour of the assessee by holding that the view taken by the Tribunal is justified. No costs.