(1985) 07 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 310 of 1981

Commissioner of Income Tax APPELLANT

Vs

Jasumal Devandas RESPONDENT

Date of Decision : 29-07-1985

Acts Referred:
Income Tax Act, 1961 — Section 187(2)

Citation : (1986) 50 CTR 172 : (1985) 156 ITR 551

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; G.D. Agrawal, for the Respondent

Judgement

J.S. Verma, J.—This reference at the instance of the Revenue is made by the Tribunal u/s 256(1) of the Income Tax Act, 1961, for decision by this court of the following question of law, namely:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in confirming the order of the Appellate Assistant Commissioner directing the Income Tax Officer to pass two separate assessment orders for the two periods ?"

2. The material facts are these. The assessee is a firm, which was originally constituted on January 1, 1968, with four partners and the same was granted registration. On June 30, 1975, one of the partners, Jasumal, expired. A new firm was constituted on July 7, 1975, with effect from July 3, 1975, in which the new partners (sic) of income for the assessment year 1976-77, one for the period from January 1, 1975, to June 30, 1975, and another for the period from July 3, 1975, to December 31, 1975.

3. The Income Tax Officer held that it was a case of a change in the constitution of the firm and, therefore, only one assessment was to he made for the entire period from January 1, 1975, to December 31, 1975. The Appellate Assistant Commissioner, on appeal by the assessee, held that on the death of Jasumal on

June 30, 1975, the earlier partnership stood dissolved. He relied on the fact that the accounts were closed for the period ending on June 30, 1975, and the trading and profit and loss account and the balance-sheet for that period were separately prepared and that the new accounts were started with effect from July 3, 1975, when the new firm was constituted. The fact that there was a gap of a few days between the death of Jasumal on June 30, 1975, and the constitution of the new firm with effect from July 3, 1975, was also relied on by the Appellate Assistant Commissioner in support of this conclusion. Accordingly, he held that it was a case of succession and two separate assessments for the aforesaid two different periods according to the two returns filed by the assessees should be made. The Tribunal has affirmed the order of the Appellate Assistant Commissioner, rejecting the Revenue''s appeal. It has held that there being no term in the partnership deed for continuance of the partnership firm on the death or retirement of any of the partners, according to the general law contained in Section 42 of the Partnership Act, on the death of one of the partners, Jasumal, the firm stood dissolved automatically and the new firm constituted thereafter was the successor-firm. The finding of the Appellate Assistant Commissioner as well as the reasons, on which it was based, was affirmed. Accordingly, the Tribunal held that the Appellate Assistant Commissioner was right in directing the Income Tax Officer to frame two assessments as required by Section 188 of the Income Tax Act.

4. Aggrieved by the Tribunal''s decision, the Revenue applied for a reference to this court u/s 256(1) of the Act and the same has been made for answering the above question.

5. At the outset, it may be mentioned that an amendment has been made in Section 187(2) of the Income Tax Act, 1961, by adding a proviso therein with effect from April 1, 1975, as under :

"Provided that nothing contained in Clause (a) shall apply to a case where the firm is dissolved on the death of any of its partners."

6. Section 187 provides for change in the constitution of a firm, while Section 188 deals with succession of one firm by another. This amendment in Section 187(2) was made by the Taxation Laws (Amendment) Act, 1984, with retrospective effect from April 1, 1975. There is no dispute that this newly added proviso to Section 187(2) applies in the present case, on the clear finding of the Tribunal that the firm stood dissolved on the death of one of the partners, Jasumal, on June 30, 1975, there being no contract to the contrary in the partnership deed. In view of this clear finding'' of the Appellate Assistant Commissioner which was affirmed by the Tribunal and the fact that the newly added proviso to Section 187(2) applies to the present case, there can be no doubt about the correctness of the conclusion of the Tribunal, affirming the Appellate Assistant Commissioner''s order, by which the Income Tax Officer was directed to make two separate assessments for the two periods, prior and subsequent to the death of Jasumal, as required by Section 188 of the Income

Tax Act.

7. A brief reference may be made to two decisions of this court which were cited before us. The Full Bench decision in Girdharilal Nannelal and Sukhlal Jhamaklal Vs. Commissioner of Income Tax, was a decision given prior to the above amendment to Section 187 of the Act, when the above-quoted proviso to Section 187(2) had not been added. The present case being governed by the newly added proviso to Section 187(2), the decision of this case is not governed by the view taken in the Full Bench case. The other case referred to was Ayodhya Prasad Parmeshwaridas Vs. Commissioner of Income Tax, wherein the above amendment, which came into force with effect from April 1, 1975, was noticed and the case was remanded to the Tribunal for a fresh decision in the light of the said amendment. It is sufficient to say that the applicability of the newly added proviso to Section 187(2) in the present case being an admitted position and the logical consequence thereof being also not in controversy, it is unnecessary to make any such remand in the present case.

8. As a result of the aforesaid discussion, this reference is answered against the Revenue and it is held that the Tribunal was justified in law in confirming the order of the Appellate Assistant Commissioner directing the Income Tax Officer to pass two separate assessment orders for the two periods. There will be no order as to costs.