
(1986) 04 RAJ CK 0027

In the Rajasthan High Court

Case No : Income Tax Reference No. 20 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Jivan Ram Mangatrai

RESPONDENT

Date of Decision : 01-04-1986

Acts Referred:

Income Tax Act, 1961 — Section 187, 188
Partnership Act, 1932 — Section 42

Citation : (1986) 56 CTR 50 : (1987) 164 ITR 233

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur ("the Tribunal" herein), has referred the following question for the decision of this court, which is said to arise out of its order dated May 31, 1979, passed in ITA No. 1180/JP/1977-78 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that separate assessments should be made in the case of the assessee-firm for the assessment year 1975-76 in respect of the periods April 1, 1974, to August 12, 1974, and August 13, 1974, to March 31, 1975, and in thus allowing the assessee's appeal ?"

2. The assessment year with which we are concerned is 1975-76. The previous year for this assessment year ended on March 31, 1975. On August 11, 1974, one of the partners, Shri Mangatrai Goyal, expired. The remaining partners took into partnership Smt. Liladevi, widow of the deceased, Mangatrai Goyal, as a new partner. The now partnership constituted under the instrument of partnership dated August 31, 1974, took over the assets and liabilities of the business with effect from August 13, 1974. The assessee-firm filed two returns of income : (1) for the period up to August 11, 1974; and (2) for the period from August 13, 1974, to March 31, 1975. The Income Tax Officer opined that there was a mere

change in the constitution of the firm and he, therefore, made one assessment for the entire period up to March 31, 1975, by his order dated November 27, 1975. The Income Tax Officer, in his order dated November 27, 1975, held that there was no dissolution of the firm at the time of death of Mangatrai Goyal and that this was only a case of change in the constitution of the firm. He, therefore, assessed the firm accordingly. He also granted registration to the firm to be operative during the assessment year 1975-76. The assessee went in appeal. The Appellate Assistant Commissioner, by his order dated December 30, 1977, dismissed the appeal relying on his previous order. A further appeal was filed before the Tribunal. The Tribunal allowed the appeal observing as under :

"We accordingly uphold the assessee's contention and direct that separate assessments should be made on the two firms in respect of the periods April 1, 1974, to August 12, 1974, and August 13, 1974, to March 31, 1975, and order dated February 22, 1978, in IT A No. 981/JP/ 76-77 in the case of M/s. Ramnath Chotulal, Chitorgarh, for 1975-76."

3. An application u/s 256(1) of the Income Tax Act, 1961 (No. XLIII of 1961) (hereinafter referred to as "the Act"), was filed and on this application, the aforesaid question has been referred for decision.

4. We had the advantage of hearing learned counsel for the Revenue only, as nobody has appeared on behalf of the assessee.

5. The following facts were not in dispute before the Tribunal and they are also not disputed by learned counsel for the Revenue before us. Mangatrai Goyal, one of the partners of the assessee-firm, died on August 11, 1974. The partners closed the books of account and divided the profit amongst the live partners on August 12, 1974. From August 13, 1974, the business was taken over by a new firm consisting of the four existing partners and Smt. Liladevi, widow of the deceased, Mangatrai Goyal. Smt. Liladevi was taken as a new partner in the partnership firm and this new partnership was made, effective from August 13, 1974. This new firm started its own books of account with effect from August 13, 1974. Both the firms filed separate returns. The Tribunal, after taking into consideration Section 42(c) of the Partnership Act, came to the conclusion that the firm stood dissolved on August 12, 1974, on account of the death of one partner, Mangatrai Goyal. The question that arose before the Tribunal was whether Section 187 of the Act applies where one firm is dissolved and it is succeeded by another. The Tribunal took into consideration the decisions of the various High Courts and followed the view taken by the Andhra Pradesh, Madras, Allahabad, Gujarat and Orissa High Courts, which is to the effect that once dissolution has taken place whether by operation of law or by act of parties and the firm is succeeded by another, Section 187 of the Act does not apply and separate assessments have to be made on the two firms. It, therefore, disagreed with the view taken by the Appellate Assistant Commissioner and ordered for separate assessments of the firm in respect of the periods specified therein. So far as this court is concerned, it is now settled that the earlier firm stands

dissolved on the death of any of its partners and if there is a fresh partnership deed, a new partnership firm comes into existence and in such a situation, there should be two separate assessment proceedings in respect of the old firm and the new firm. Reference, in this connection, may be made to Additional Commissioner of Income Tax Vs. Emery Stone Mfg. Co., and Surana and Co. Vs. Commissioner of Income Tax, Following the aforesaid decisions, a somewhat similar view was taken in Commissioner of Income Tax Vs. Sukhlal Sohanlal, On the basis of the reasons given therein and in view of the undisputed facts detailed hereinabove, we are of the considered opinion that the Tribunal was right when it held that separate assessments should be made in the case of the assessee-firm regarding the assessment year 1975-76 in respect of the periods April 1, 1974, to August 12, 1974, the date of the dissolution of the old firm after the death of one partner, Mangatrai Goyal, and August 13, 1974 (the date of the commencement of the new firm) to March 31, 1975.

6. For the aforesaid reasons, we answer the question referred by the Tribunal in the affirmative, i.e., in favour of the assessee and against the Revenue.

7. As nobody has appeared on behalf of the assessee, there will be no order as to costs of this reference.