(1988) 04 RAJ CK 0029

In the Rajasthan High Court

Case No : Income Tax Reference No. 23 of 1982

COMMISSIONER OF Income Tax — APPELLANT

Vs

KAILASH CHANDRA. — RESPONDENT

Date of Decision : 28-04-1988

Acts Referred:
Income Tax Act, 1961 — Section 187, 188, 256

Citation : (1988) 174 ITR 326 : (1988) 40 TAXMAN 29

Hon'ble Judges : J. S. Verma, C.J

Bench : Division Bench

Judgement

J. S. VERMA C.J. - This reference u/s 256(1) of the Income Tax Act, 1961, is 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 correct in law in holding that on the death of Shri Prithviraj (partner), there was dissolution of the firm and the assessments should have been made by the Income Tax Officer ?

The relevant assessment year is 1976-77. The assessee-firm consisted of five partners, one of whom, Prithviraj, died on June 26, 1975. Thereafter, the remaining four partners took in the widow of Prithviraj in that partnership and constituted a new partnership by a partnership deed dated July 22, 1975. The assessee filed two returns, one for the period up to the death of Prithviraj and the other for the period subsequent to that date. The Income Tax Officer took the view that it was a case merely of a change in the constitution of the firm governed by section 187 of the Act so that a single assessment for the whole year was to be made. The Appellate Assistant Commissioner affirmed this view on appeal by the assessee. Further appeal of the assessee to the Tribunal has, however, succeeded. The Tribunal has held that the old firm stood dissolved on the death of Prithviraj and a new firm was constituted thereafter and, therefore, it was a case of succession governed by section 188 of the Act on account of which two separate assessments for the two periods were required to be made.

The point involved in the present case is governed by section 187 of the Act, as amended by the insertion of the proviso in sub-section (2) retrospectively with effect from April 1, 1975 by the Taxation Laws (Amendment) Act, 1984. This proviso clearly says that nothing contained in clause (a) of sub-section (2) shall apply to a case where the firm is dissolved on the death of any of its partners. The case being admittedly governed by this proviso, it is clear that section 187 does not apply on account of the dissolution of the old firm on the death of one of its Partners, namely, Prithviraj, and constitution of the new firm thereafter in the manner already indicated. The Tribunals view was, therefore, justified.

Consequently, the reference is answered in the affirmative against the Revenue and in favour of the assessee by holding that the Tribunals view was justified. No costs.