
(1985) 11 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 377 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Kheta Sons and Co.

RESPONDENT

Date of Decision : 04-11-1985

Acts Referred:

Income Tax Act, 1961 — Section 187, 187(2)

Citation : (1986) 55 CTR 35 : (1986) 54 CTR 35 : (1986) ILR (MP) 238 : (1986) 162 ITR 833 : (1986) 31 MPLJ 360 : (1986) MPLJ 360 : (1986) 29 TAXMAN 350

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

J.S. Verma, Actg. C.J.

This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue to answer the following questions of law, namely :

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

Whether, on the facts and in the circumstances of the case, and keeping in view the specific provisions in the Income Tax Act, the Appellate Tribunal was justified in relying on the provisions of the Partnership Act, particularly those of Section 42(c), as against the express provisions of the Income Tax Act, 1961 ? "

The assessee is a registered firm which was constituted initially under a partnership deed dated April 7, 1967, comprising of three partners. One of the partners, Magan Bhai Kheta, died on June 25, 1974, as a result of which a new partnership deed was drawn up and some more partners were taken in. For the relevant assessment year 1975-76, the assessee filed two returns for the two different periods prior to and subsequent to the date of death of Magan Bhai

Kheta. It may be mentioned that there was no term in the partnership deed that the firm shall continue without being dissolved even on the death of one of the partners. The assessee's contention was that it was a case of succession governed by Section 188 of the Act since the partnership firm stood dissolved during the relevant period of assessment as a result of the death of one of its partners, Magan Bhai Kheta, on June 25, 1974. The Income Tax Officer rejected this contention and held that it was merely a case of a change in the constitution of the firm which was governed by Section 187 of the Act and, therefore, one consolidated assessment was required to be made for the entire period clubbing the income for both the periods. The assessee's appeal to the Commissioner of Income Tax (Appeals) was, however, allowed accepting the assessee's contention that it was a case of succession of firm governed by Section 188 of the Act. The Commissioner of Income Tax (Appeals), therefore, directed that two separate assessments be framed for the two different periods according to the returns filed by the assessee. This view was taken on the ground that in the absence of any contract to the contrary in the deed of partnership, a firm stood automatically dissolved under the general law on the death of one of its partners during the relevant period of assessment. This view of the Commissioner of Income Tax (Appeals) has been affirmed by the Tribunal.

Aggrieved by the view taken by the Tribunal, a reference was sought by the Revenue which has been made by the Tribunal for answering the aforesaid questions of law.

The only question involved in this case is the effect of insertion of the proviso in Sub-section (2) of Section 187 retrospectively with effect from April 1, 1975, by the Taxation Laws (Amendment) Act, 1984, which is 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."

Section 187(2) as it stood prior to this amendment was interpreted along with Section 188 of the Act by a Full Bench of this court in *Girdharilal Nannelal and Sukhlal Jhamaklal Vs. Commissioner of Income Tax*, to mean that it indicates where one or more of the partners of the old firm continue to be partners in the new firm, it is a case of change in the constitution of the firm, as defined in Section 187(2). But for the proviso inserted in Section 187(2), retrospectively with effect from April 1, 1975, according to this Full Bench decision, it is Section 187 and not Section 188 which would have applied to the facts of the present case. However, the above proviso inserted in Sub-section (2) of Section 187 retrospectively with effect from April 1, 1975, applies to the assessment year 1975-76 which is the relevant assessment year for the purpose of this case and, therefore, it is on the basis of this proviso that the present case is to be decided. In view of the settled principle relating to the applicability of such an amendment, it cannot be doubted that this amendment inserting the proviso in Sub-section (2) of Section 187 applies to the assessment year commencing on April 1, 1975, i.e., the assessment year 1975-76 which is the relevant

assessment year in the present case (see Commissioner of Income Tax, West Bengal Vs. Isthmian Steamship Lines,).

The result of the applicability of the above proviso to Sub-section (2) of Section 187 is that Section 187(2)(a) shall not apply to a case like the present where the firm is dissolved on the death of any of its partners under the general law of partnership in the absence of a contract to the contrary. This being so, it is a case of succession governed by Section 188 on account of the fact that applicability of Section 187 is excluded by virtue of the proviso to Sub-section (2) of Section 187.

No doubt the view taken by the Tribunal was prior to the aforesaid amendment in Section 187(2) when the construction of Section 187 was required to be made in the manner indicated by the aforesaid Full Bench decision but the consequence of the retrospective amendment in Section 187(2) is that the Tribunal's view has now to be held as justified.

Consequently, the reference is answered against the Revenue and in favour of the assessee by answering both the aforesaid questions in the affirmative. There will be no order as to costs.