(1987) 01 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 329 of 1984

Commissioner of Income Tax APPELLANT

Vs

Malhotra Dairy RESPONDENT

Date of Decision : 27-01-1987

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

Citation : (1987) 61 CTR 46 : (1987) 166 ITR 241

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; None, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner that two separate assessments were to be made on the assessee in respect of the two periods of the relevant accounting year of the assessment year 1979-80, i.e., the period up to the death of Heeralal and the period thereafter ?"

2. The material facts giving rise to this reference, briefly, are as follows :

3. The assessee is a partnership firm and the assessment year in question is 1979-80, for which the accounting year ended on July 31, 1978. During the accounting year, one of the partners of the partnership firm, Heeralal, died on March 21, 1978, and the firm was reconstituted by the remaining partners on the next day. An agreement in that behalf was executed on April 17, 1978. While framing the assessment, the Income Tax Officer was of the opinion that the firm was merely reconstituted and hence only one assessment need be made. On appeal, the Appellate Assistant Commissioner took a contrary view and held that dissolution of the old firm took place due to the death of a partner and the

partnership firm that came into existence was a new one. The Appellate Assistant Commissioner accordingly directed the Income Tax Officer to frame two assessments for the two periods before and after the death of Heeralal. Aggrieved by the order passed by the Appellate Assistant Commissioner, the Revenue preferred an appeal before the Tribunal which was dismissed. Hence, the Revenue sought a reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

4. Shri Mukhati, learned counsel for the Revenue, was heard. None appeared on behalf of the assessee. In Commissioner of Income Tax Vs. Kheta Sons and Co., , a Division Bench of this court has held that after the insertion of the proviso in Sub-section (2) of Section 187 of the Act, by the Taxation Laws (Amendment) Act, 1984, Section 187(2)(a) of the Act would not apply to cases where the firm is dissolved on the date of death of any of its partners in the absence of a contract to the contrary. The applicability of the proviso to the assessment year 1979-80 was not disputed. Therefore, it must be held that the Appellate Assistant Commissioner was right in holding that two separate assessments should be made for the two different periods, one before the death of the partner and the other after his death. In this view of the matter, the Tribunal, in our opinion, was justified in upholding the order passed by the Appellate Assistant Commissioner. For all these reasons, our answer to the question referred to this court is in the affirmative and against the Revenue. In the circumstances of the case, there shall be no order as to costs of this reference.

