
(1997) 12 AHC CK 0140
In the Allahabad High Court
Case No : IT Ref. No. 317 of 1982

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

MITTAL INDUSTRIES

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 187, 188, 256

Citation : (1998) 150 CTR 331

Hon'ble Judges : Rk Gulati, J; R.K. Gulati, J; M.C. Agarwal, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

BY THE COURT:

The Tribunal, Delhi Bench "A" New Delhi at the instance of the Revenue has referred the following question of law for the opinion of this Court under s. 256(1) of the IT Act :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that s. 187(2) of the IT Act, 1961, was not applicable to the facts of the present case and in confirming the order of the CIT(A) directing the ITO to make the separate assessments on the assessee for the asst. yr. 1978-79?"

2. We have heard learned standing counsel for the Revenue. No one has put in appearance on behalf of the assessee despite the fact that notice was served.

The dispute pertains to the asst. yr. 1978-79. The assessee firm was constituted on 9th April, 1976 by three partners, Ram Chandra, Satya Narain and Ishwar Chandra. On 21st Oct., 1977, Ishwar Chandra retired from the firm and on the following date, i.e., 22nd Oct., 1977 the remaining two partners along with one Shn Bhagwan reconstituted the firm and carried on the partnership business under the same name and style in which the business was being carried on

earlier, The assessee filed two returns of income for the assessment year in dispute, one for the period from 30th March, 1977, to 20th Oct., 1977, and the second for the period from 21st Oct., 1977, to 15th April, 1978, and claimed that two separate assessments should have been made on the basis of two returns filed by the assessee. The ITO, however, framed one assessment clubbing the income of both the periods on the view that it was a case of change in the constitution of the firm in terms of s. 187(2) of the Act. However, on appeal, the case of the assessee was accepted in as much as the appellate authority directed that two separate assessments should be made for the two broken periods. On further appeal by the Revenue before the Tribunal the order passed in appeal was sustained. It is in these circumstances the aforesaid question has been referred to this Court.

3. The controversy that arises for consideration is whether it is a case covered by s. 187 or it is a case of succession within the meaning of s. 188 which may warrant two separate assessments in respect of the two periods stated earlier.

Sec. 187 provides that where at the time of making an assessment, it is found that a change has occurred in the constitution of the firm the assessment shall be made on the firm as it is constituted at the time of making the assessment. The expression "change" in the constitution of the firm is defined in sub-s. (2) of s. 187, which reads as under :

"(2) For the purposes of this section, there is a change in the constitution of the firm-

(a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them. "

4. From the facts narrated earlier, It is evident that in the reconstituted firm two of the partners were also partners in the firm before the firm was reconstituted.

The case clearly falls under cl. (a) of sub-s. (2) of s. 187 of the Act and, therefore, it is a case of change in the constitution of the firm which called for one assessment for the two periods stated earlier. This view is amply borne out by a decision of the Supreme Court in COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE., .

In view of what has been stated above, we have no hesitation in holding that the Tribunal had gone wrong when it held that in the circumstances of the case two assessments should have been made.

In these circumstances, the question referred is answered in the negative, that is, in favour of the Revenue and against the assessee.

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