(1998) 11 GUJ CK 0032

In the Gujarat High Court

Case No : IT Ref. No. 138 of 1984

Commissioner of Income Tax APPELLANT

Vs

Naresh Tea Stores RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:
Income Tax Act, 1961 — Section 187(2), 188

Citation : (1999) 153 CTR 211 : (1999) 240 ITR 33

Hon'ble Judges : Rajesh Balia, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; K.C. Patel, for the Respondent

Judgement

BY THE COURT

1. Heard learned counsel for the parties. On the application of the CIT, the following question of law has been referred to this Court for its opinion along with statement of case arising out of Tribunal''s appellate order dt. 18th April, 1983, relating to asst. yr. 1978-79 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the death of the partner Shri Jayantilal Mohanlal had not brought the change in the constitution of the firm as contemplated by s. 187(2) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that two separate assessments were required to be made for the two periods on account of the death of the partner of the assessee-firm ?"

2. The facts of the case are that assessee M/s. Naresh Tea Stores, Bhavnagar, is a firm constituted vide partnership deed dt. 2nd October, 1970. It consisted of 7 partners, one of whom Shri Jayantilal Mohanlal died on 16th May, 1977, during previous year relevant to the asst. yr. 1978-79 in question. Another partnership

deed was executed on 17th May, 1977, between the remaining partners and Shri Arvind Jayantilal, son of Jayantilal and business was carried on in the same name and style. The assessee claimed that on the death of partner Jayantilal, the firm stood dissolved and by the deed of 17th May, 1977, a new firm has come into existence hence the old firm M/s. Naresh Tea Stores with Jayantilal as one of its partner should be assessed only for the period upto 15th May, 1967, namely, upto the date of death of Shri Jayantilal and a separate assessment has to be formed for newly constituted partnership under deed dt. 17th May, 1977, for the remainder of the said previous year. The ITO was of the opinion that in the facts and circumstances of the case, it was not a dissolution of the firm but it was merely a reconstitution of the firm and s. 187 was applicable to the case and only one assessment for the year in question, was framed.

3. The Tribunal found that there was no such specific provision in the partnership deed dt. 2nd October, 1970, for the continuation of the partnership, in the event of death of any partner, nor for that matter, any material has been brought to notice that such a condition exists and further noticed that para 14 of the partnership deed in terms provided that the provisions of Partnership Act would be applicable to the partnership in respect of all matters not spelt out in the deed itself.

On this premise, the Tribunal found that provisions of Partnership Act would prevail in the absence of contract to contrary and partnership came to an end on the death of Jayantilal, as provided in s. 42 of the Partnership Act.

4. In our opinion, no exception can be found to the decision of the Tribunal on the question about coming to an end of the existing partnership on the death of partner under the Partnership Act when there was no contract to contrary. If that be so, the consequence would follow that the existing partnership firm of which deceased was a partner would be assessed only upto date upto which it existed and for the period thereafter new firm which has come into existence by dint of a new partnership deed will be assessed for the remainder of the previous year, relating to the said assessment year.

5. This also is the view taken by this Court in Commissioner of Income Tax Vs. G. Dalabhai and Co., .

As a result of the aforesaid discussion, we answer the questions referred to us in affirmative, that is to say, in favour of the assessee and against the Revenue.

There shall be no order as to costs.