(2004) 10 AHC CK 0082

In the Allahabad High Court

Case No : Income Tax R. No. 38 of 1982

Commissioner of Income Tax APPELLANT

Vs

Prakash Textiles Agents RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Income Tax Act, 1961 — Section 187, 187(2), 188, 256(1)

Citation : (2005) 276 ITR 582

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act", for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that even if there was merely a change in the constitution of the firm within the meaning of Section 187(2) of the Act, the Income Tax Officer was duty bound in law to make the separate assessments in respect of the two periods and in further directing the Income Tax Officer to exclude from the assessment the income pertaining to first period ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the Income Tax Officer to allow renewal of registration for the assessment year under consideration in respect of the previous year period from May 1, 1974, to March 2, 1975 ?"

2. Briefly stated the facts giving rise to the present reference are as follows :

The respondent-assessee is a firm. The reference relates to the assessment year 1976-77, the previous year used to be from May 1 to April 30, i.e., from May 1, 1974 to April 30, 1975. The respondent-firm was constituted in terms of the deed dated May 1, 1979, consisting of four partners out of which two partners, namely, Om Prakash and Laj Kumari retired on March 2, 1975, and with effect from March 3, 1975, two minors, namely, Alok and Anupam were admitted to the benefits of partnership on March 3, 1975. However, on April 26, 1975, one of the existing partners, Laxman Dass, committed suicide. The respondent closed its accounts for the year May 1, 1974, up to April 25, 1975. It furnished two returns of total income, i.e., one for the year May 1, 1974, to March 2, 1975, and the other relating to the period March 3, 1975, to April 25, 1975, and claimed that it is a case of succession and, therefore, in view of the provisions of Section 188 of the Act two assessments should be made. It may be mentioned here that up to the assessment year 1975-76, the respondent-firm had been granted registration/renewal of the registration. For the assessment year 1976-77, the respondent had filed an application in Form No. 11A on September 29, 1976, seeking registration. It has filed declaration in Form No. 12 on June 30, 1975, to the effect that there have been no changes in the partners or in the profit sharing ratio during the period May 1, 1974, to March 2, 1975.

3. The Income Tax Officer was of the opinion that it is a case of change in the constitution of the firm in terms of Section 187 of the Act and, therefore, only one assessment, not two assessments should be made. He also rejected the application for grant of registration filed in Form No. 11A of the Act as he did not condone the delay. However, he did not pass any order on the application filed in Form No. 12 of the Act.

4. Feeling aggrieved the respondent preferred separate appeals before the Appellate Assistant Commissioner who confirmed the orders passed by the Income Tax Officer. The matter was taken up in further appeals before the Tribunal. The Tribunal has held that only one assessment and not two assessments should be made. Further it is also held that there was no partnership deed in the eyes of law after March 2, 1975, and, therefore, the registration has rightly been refused by the assessing authority. So far as the declaration in Form No. 12 is concerned, the Tribunal has held that the old firm is entitled to renewal of registration in the assessment year 1976-77 up to the period March 2, 1975.

5. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue. Nobody has put in appearance on behalf of the respondent-assessee. It may be mentioned that notice to engage another counsel was issued by the office on July 25, 2004, fixing August 25, 2004. Neither the acknowledgement due, nor the undelivered cover has been received back and, therefore, in accordance with Chapter VIII, Rule 12 of the High Court Rules the service is deemed sufficient.

6. Shri A. N. Mahajan, learned standing counsel, submitted that as the firm as it stood on March 3, 1975, consisted of two existing partners and there was a provision in the partnership deed that in the case of death of any of the partners the firm shall not stand dissolved but shall be continued by the legal representative of the deceased partner, it was not a case of dissolution but of

reconstitution, i.e., the change in the constitution of the firm falling u/s 187 of the Act and thus, only one assessment and not two assessments ought to be made. We find force in the submission of Shri A. N. Mahajan. In view of the stipulation in the partnership deed that the firm shall not stand dissolved on the death of any of the partners but shall be continued with the legal representatives of the deceased partner and as on March 3, 1975, the firm which was reconstituted consisted of the existing two partners, it was a case falling u/s 187 of the Act. Thus only one assessment is to be made. So far as the question of grant of renewal of the registration certificate is concerned, it may be mentioned here that in Form No. 12 filed by the respondent, it was clearly stated that there had been no change in the partners or the profit sharing ratio during the period May 1, 1974, to March 2, 1975. Thus, in view of the law laid down by the apex court in the case of Wazid Ali Abid Ali Vs. Commissioner of Income Tax, Lucknow, the firm was entitled to renewal of the registration.

7. In view of the foregoing discussions, we answer the first question of law in the negative, i.e., in favour of the Revenue and against the assessee, and the second question of law in the affirmative, i.e., in favour of the assessee and against the Revenue. There will be no order as to costs.