(1995) 11 AHC CK 0030

In the Allahabad High Court

Case No : Income-tax Reference No. 144 of 1980

Commissioner of Income Tax APPELLANT

Vs

Ram Jas Rai Askaran Das RESPONDENT

Date of Decision : 23-11-1995

Acts Referred:
Income Tax Act, 1961 — Section 184(7), 187(2)

Citation : (1996) 134 CTR 407 : (1996) 218 ITR 18 : (1996) 85 TAXMAN 133

Hon'ble Judges : Om Prakash, J;M. Katju, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal at the instance of the Revenue, referred the following question u/s 256(1) of the Income Tax Act, 1961, for the opinion of this court ;

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in directing that two assessments should be made, one for the period prior to change in the constitution of the firm and another for the period after the change in the constitution of the firm ?"

2. The facts as found by the Tribunal are that the previous year of the assessee a registered firm ended on October 24, 1974. On March 31, 1974, Smt. Naini Bai and Sri Ramanand retired from the firm and the firm was reconstituted by the remaining four partners who also admitted some minors to the benefits of the partnership. The assessee claimed before the Income Tax Officer that on retirement of Smt. Naini Bai and Sri Ramanand, the partnership was dissolved on March 31, 1974, and a new partnership came into existence from April 1, 1974, consisting of the remaining four partners and four minors, admitted to the benefits of the partnership. On that basis, the assessee claimed that two assessments, one for the period up to March 31, 1974, and another for the remaining period, i.e., from April 1, 1974, to October 24, 1974, be made. The claim of the assessee was not accepted by the Income Tax Officer who made one assessment for both the periods. The appeal of the assessee filed before the

Appellate Assistant Commissioner failed.

3. The assessee then further appealed to the Appellate Tribunal which relying on Commissioner of Income Tax Vs. Shiv Shanker Lal Ram Nath, and BADRI NARAIN KASHI PRASAD Vs. ADDL. COMMISSIONER OF INCOME TAX. FANCY STORES v. COMMISSIONER OF INCOME TAX. R. C. GUPTA and SONS v. COMMISSIONER OF INCOME TAX. BENI PD. SIDGOPAL v. COMMISSIONER OF INCOME TAX., accepted the assessee''s contention in appeal and directed the Income Tax Officer to make two assessments, one for the period up to March 31, 1974, and another for the remaining period.

4. The question for consideration is whether the law laid down in the aforesaid cases still holds the field. In Commissioner of Income Tax Vs. Ramesh Biscuit Factory, , a Bench of this court in which one of us (Om Parkash J.) was a member, held that the law laid down in the cases of Commissioner of Income Tax Vs. Shiv Shanker Lal Ram Nath, and BADRI NARAIN KASHI PRASAD Vs. ADDL. COMMISSIONER OF INCOME TAX. FANCY STORES v. COMMISSIONER OF INCOME TAX. R. C. GUPTA and SONS v. COMMISSIONER OF INCOME TAX. BENI PD. SIDGOPAL v. COMMISSIONER OF INCOME TAX., is no longer good law, inasmuch as these cases were overruled by a Full Bench of this court in Vishwanath Seth Vs. Commissioner of Income Tax, .

5. Then, it was argued before us by counsel for the assessee that the Full Bench decision in Vishwanath Seth Vs. Commissioner of Income Tax, was disapproved and must be deemed to have been overruled by the decision of the Supreme Court in Wazid Ali Abid Ali Vs. Commissioner of Income Tax, Lucknow, and, therefore, on that basis, the order of the Appellate Tribunal cannot be reversed. We do not agree with this contention. A similar submission was made before a Division Bench of this court in Commissioner of Income Tax Vs. Indralok Picture Palace, and then the Bench observed in para 3 as under (at page 731) :

"This very contention, it appears, was urged before and considered by a Bench of this court in Commissioner of Income Tax Vs. Basant Behari Gopal Behari and Company, . The Division Bench was of the opinion that the said decision of the Supreme Court cannot be treated as having overruled the Full Bench decision in Vishwanath Seth Vs. Commissioner of Income Tax, . The said decision is binding upon us."

6. The same Division Bench further observed in the same paragraph (at page 731) :

" Even otherwise, we agree with the reasoning of the said Division Bench. The decision of the Supreme Court was rendered with reference to the language of Sub-section (7) of Section 184 which is materially different from the language of Sub-section (2) of Section 187. We, therefore, agree with the Bench decision in Commissioner of Income Tax Vs. Basant Behari Gopal Behari and Company, that the Full Bench decision of this court in Vishwanath Seth Vs. Commissioner of Income Tax, is and continues to be good law even today."

7. Following the decision in Commissioner of Income Tax Vs. Basant Behari Gopal Behari and Company, and Commissioner of Income Tax Vs. Indralok Picture Palace, we hold that the Full Bench decision in Vishwanath Seth Vs. Commissioner of Income Tax, still holds the field and continues to be good law.

8. Following the Full Bench decision in Viswanath Seth''s case [1984] 14 ITR 249 the view taken by the Appellate Tribunal is certainly erroneous. In the case of reconstitution of the firm not two but one assessment has to be made on the firm as it stood at the end of the year.

9. We, therefore, answer the question referred to this court in the negative, that is, in favour of the Revenue and against the assessee.

10. The records of this case will be sent down within fifteen days from today to enable the Appellate Tribunal to pass an order conformably to our order.