(1982) 04 AHC CK 0073

In the Allahabad High Court

Case No : Income-tax Reference No. 115 of 1978

Commissioner of Income Tax APPELLANT

Vs

Satya Deo Omprakash RESPONDENT

Date of Decision : 29-04-1982

Acts Referred:

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

Citation : (1982) 30 CTR 284 : (1982) 136 ITR 720

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; R.K. Gulati, for the Respondent

Final Decision : Disposed Of

Judgement

Seth, J.—The firm, M/s. Satya Deo Omprakash, was originally constituted under a deed of partnership dated April 2, 1965. One of its partners, namely, Sri Omprakash, died on August 8, 1971. The remaining partners, along with the wife of the deceased partner by a deed dated 12th August, 1971, dissolved the partnership and constituted a new firm with effect from 11th August, 1971. For the assessment year 1972-73, the assessee filed tw6 returns, one for the period from April 1, 1971, to August 7, 1971, and the other for the period from August 11, 1971, to March 31, 1972. The ITO made two separate assessments on the two firms on the basis that the old firm was dissolved and the new firm was constituted. The Commissioner cancelled the assessments u/s 263 of the Act on the ground that the case squarely fell u/s 187(2) of the Act and the ITO should have made a combined assessment on the old and new firms. The ITO was directed to make fresh assessments in accordance with law. The assessee challenged the order in appeal before the (income tax Appellate Tribunal.

2. In pursuance of the direction of the Commissioner, the ITO passed a fresh assessment order. On appeal by the assessee, the AAC set aside the assessment order and directed the ITO to make two assessments. The order of the AAC was challenged in appeal by the department. This appeal along with the appeal filed

by the assessee against the order of the Commissioner passed u/s 263 of the Act were disposed of by the Tribunal by a common order. The Tribunal, following the Full Bench decision of this court in the case of Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, , allowed the appeal filed by the assessee and dismissed the appeal of the department. At the instance of the department, the Tribunal has referred the following question for the opinion of this court;

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in setting aside the order of the Commissioner of Income Tax passed u/s 263(1) of the Income Tax Act, 1961, and thereby confirming the Appellate Asstt. Commissioner''s order directing the Income Tax Officer to make two separate assessments, one for the period between April 1, 1971 to August 7, 1971, and the other for the period between August 11, 1971, to March 31, 1972, relevant to the assessment year 1972-73 ?"

3. As noted earlier, one of the partners of the firm, M/s. Satya Deo Omprakash, died on 7/8 August, 1971. A deed of dissolution was drawn up, whereunder the old firm was dissolved by mutual consent of the remaining partners. Once the old firm was dissolved by the mutual consent of the surviving partners of the firm and a new partnership came into existence, the case squarely fell u/s 188 of the Act and not u/s 187(2). Apart from the decision in the case of Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, , this view finds support from the decisions of this court in Addl. Commissioner of Income Tax Vs. Dilsukh Rai Madho Prasad, and Commissioner of Income Tax Vs. Kunj Behari Shyam Lal, , wherein it has been ruled that where a firm is dissolved either by agreement of partners or by operation of law and another firm takes over the business, that will be a case of succession governed by Section 188 of the I.T. Act, 1961, even though some of the partners of the two firms were common. The view taken by the Tribunal must be upheld. We, therefore, answer the question referred in the affirmative, in favour of the assessee and against the department. The assessee is entitled to costs which are. assessed at Rs. 250.