
(1990) 11 AHC CK 0051

In the Allahabad High Court

Case No : Income-tax Reference No. 281 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Satya Deo Omprakash

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 187(2)

Citation : (1991) 92 CTR 182 : (1991) 188 ITR 303

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;V.N. Mehrotra, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—The Income Tax Appellate Tribunal has referred the following question u/s 256(1) of the Income Tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the order of the Appellate Assistant Commissioner directing the completion of three assessments for the three periods instead of a single assessment in the entire previous year from April 1, 1971, to March 31, 1972, relevant for the assessment year 1972-73 ?"

2. The assessment year is 1972-73. The relevant previous year ended on March 31, 1972. The assessee is a partnership firm. It consisted of five partners on the first day of the relevant previous year. On May 5, 1971, two of the partners retired and the firm was reconstituted on May 6, 1971, with the remaining partners who took in a new partner, Arun Kumar. Again, on August 7, 1971, one of the partners, Om Prakash, died. The firm was again reconstituted with effect from August 11, 1971, by taking one Sri Kamal Kapoor, the son of the deceased partner, Om Prakash.

3. The partnership filed three returns, one for the period April 1, 1971 to May 5, 1971, the second for the period May 6, 1971 to August 7, 1971, and the third for the period August 11, 1971 to March 31, 1972. The Income Tax Officer, however, was of the opinion that there ought to be a single assessment, since it is a case

of mere reconstitution of the firm on both the occasions.

4. On appeal, however, the Appellate Assistant Commissioner accepted the petitioner's contention and held that it was a case of succession by a new firm on both the occasions. The order of the Appellate Assistant Commissioner was challenged in appeal by the Department before the Tribunal. The Tribunal dismissed the appeal following certain decisions of the Allahabad High Court, namely, *Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another*, and *Commissioner of Income Tax Vs. Shiv Shanker Lal Ram Nath*, . Thereupon, the Revenue obtained this reference.

5. We may mention at the outset that the respondent's counsel is not present even though the list was revised. He was also not present yesterday when the case was called out (the list of yesterday is continued today). The paper book does not contain the partnership deed which was executed on May 6, 1971, or the partnership deed that was executed on August 11, 1971. We have, therefore, to answer the question on the basis of the material available from the orders of the three authorities under the Act. We shall first deal with what happened on May 5, 1971. As stated above, on this date, two of the five partners retired and a fresh deed of partnership was executed on the next day taking in a new partner. There is no material before us to show that the partnership was dissolved on May 5, 1971, and a new partnership was created to take over and carry on the assets and business of the previous partners. If so, one must hold that it is a case of mere reconstitution. Sub-section (2) of Section 187 reads as follows :

"(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 ;

Provided that nothing contained in Clause (a) shall apply to a case where the firm is dissolved on the death of any of its partners."

6. A reading of this sub-section shows that where one or more partners continue and one or more new partners are admitted, it would be a case of reconstitution. We must reiterate that, in the absence of any other material, we must hold that it is merely a case of reconstitution.

7. Now, we come to what happened on August 7, 1971. On this day, one of the partners died. Since the partnership deed is not placed before us nor is it shown that the said deed contained a clause to the effect that death of a partner shall not result in dissolution, we have to proceed on the assumption that the death of a partner did bring about a dissolution.

8. The mere fact that four days later his son was taken in as a partner cannot make any difference. Hence, it would not be a case of reconstitution but one of succession of one firm by the other.

9. Accordingly, the question is answered in the following terms. There shall be one assessment for the period April 1, 1971, to August 7, 1971, and there shall be another separate assessment for the period August 11, 1971, to March 31, 1972. The question is answered accordingly which is partly in favour of the assessee and partly in favour of the Department. No costs.