
(1992) 06 GAU CK 0004
In the Gauhati High Court
Case No : Income-tax Reference No. 4 of 1986

Deorah and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-06-1992

Acts Referred:

Income Tax Act, 1961 — Section 170, 182, 183, 184, 185

Citation : (1993) 200 ITR 467

Hon'ble Judges : U.L. Bhat, C.J.; W.A. Shishak, J

Bench : Division Bench

Advocate : None, for the Appellant; D.K. Talukdar, for the Respondent

Judgement

U.L. Bhat, C.J.—This reference u/s 256(1) of the Income Tax Act, 1961, is at the instance of the assessee as well as the Revenue. At the instance of the assessee, the following two questions have been referred :

"1. Whether, on the facts and in the circumstances of the case and having regard to the fact that the firm, M/s. Deorah and Co., as originally constituted stood dissolved on June 30, 1976, the Tribunal was justified in holding that Section 187 of the Income Tax Act, 1961, applies to the facts of the case for the reason that Shri Gobind Prasad Deorah who was a partner in the firm as initially constituted and is also a partner in the new firm along with three other persons ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income Tax Officer was justified in computing income of the assessment year 1977-78 under one assessment and thereby setting aside the order of the Commissioner of Income Tax (Appeals) in this regard and restoring the order of the Income Tax Officer?"

2. At the instance of the Revenue, the following questions have been referred :

"3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that it is not possible to find any fault with the order of the

Commissioner of Income Tax (Appeals) which forms the subject matter of ITA No. 262 (Gauhati) of 1983 and sustaining the order of the Commissioner of Income Tax (Appeals) holding that the assessee-firm is entitled to continuation of registration for the period from April 1, 1976, to June 30, 1976 ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Commissioner of Income Tax (Appeals) was fully justified in holding that there was no infirmity in the deed of partnership dated September 22, 1976?"

3. In spite of notice, the assessee did not appear and did not file the paper book. We have heard learned counsel for the Revenue. The assessee-firm, M/s. Deorah and Co., was originally constituted by two partners, Usha Devi Deorah and Gobind Prasad Deorah, under a partnership deed dated April 1, 1973. Usha Devi Deorah "retired" from the partnership with effect from June 30, 1976, and all the assets, liabilities and business of the firm were taken over by Gobind Prasad Deorah.

4. He and three others, namely, Mohan Lal Deorah as guardian of his minor son, Roopesh Kumar Deorah, Sushil Kumar Deorah as guardian of his minor son, Prasanta Deorah and Suresh Kumar Deorah, mutually agreed and determined the value of goodwill of the firm at Rs. 20,000 as on June 30, 1976, and the three latter persons agreed to pay 75 per cent. of the value to the pre-existing partner. Gobind Prasad Deorah, Mohan Lal Deorah, Sushil Kumar Deorah and Suresh Kumar Deorah entered into a deed of partnership on September 22, 1976, reciting that they have been carrying on the partnership with effect from July 1, 1976, under the existing name and style and mutually agreed upon terms and conditions set out therein.

5. The above changes took place during the assessment year 1977-78 for which the relevant previous year is 1976-77. The firm as originally constituted applied for continuance of registration in Form No. 12 for the period from April 1, 1976, to June 30, 1976. The firm as constituted with effect from July 1, 1976, applied for registration and filed Forms Nos. 11 and 11A for the remaining part of the accounting year July 1, 1976, to March 31, 1977, for the assessment year 1977-78. The assessee filed two returns, one for the period ending June 30, 1976, and the other for the period July 1, 1976 to March 31, 1977. The Income Tax Officer took the view that it was a case of reconstitution of the firm as contemplated u/s 187 of the Act, that the partnership was void on account of the admission of two minors and that the firm was not genuine. On this basis, the Income Tax Officer refused registration and passed an order of assessment u/s 185 of the Act against the reconstituted firm for the whole year.

6. These orders were challenged by the assessee by filing three separate appeals before the Commissioner of Income Tax (Appeals). The Commissioner held that there was no infirmity in the partnership contract and that the firm was genuine and accordingly set aside the order refusing registration for the period July 1,

1976, to March 31, 1977, and granted registration for that period. He also passed an order allowing the assessee's claim for continuance of registration for the period ending June 30, 1976. The Commissioner was of the further view that, on the retirement of Usha Devi Deorah, the firm stood dissolved and that, therefore, Section 187 of the Act did not apply but that Section 188 applied. He directed that there should be two separate assessments, one for the period April 1, 1976, to June 30, 1976, and the other for the period July 1, 1976, to March 31, 1977.

7. The Revenue filed three appeals before the Tribunal challenging the above orders. The Tribunal held that since Gobind Prasad Deorah was a partner of the firm as initially constituted and continued to be a partner in the firm with a new partner, Section 187 of the Act was attracted and Section 188 would not apply. Accordingly, the order of assessment passed by the Commissioner was set aside and that passed by the Income Tax Officer was restored. The Tribunal noticed that though in the partnership dated September 22, 1976, Gobind Prasad Deorah represented his Hindu undivided family, Suresh Kumar Deorah represented his branch of the Hindu undivided family and Mohan Lal Deorah and Sushil Kumar Deorah are described as guardians of their respective minor sons, yet qua the partnership they functioned in their personal capacity, that the minors were not even admitted to the benefits of partnership and were not made liable for loss, that only four named persons constituted the partnership and hence there was no legal infirmity in the partnership deed. On these grounds, the order of the Commissioner regarding grant of registration and continuance of registration were upheld.

8. On the question regarding infirmity in the partnership deed dated September 22, 1976, no argument has been advanced before us. The Tribunal correctly analysed the constitution of the partnership and its terms and conditions and came to the conclusion that the minor sons are not parties to the partnership and hence there is no infirmity. This view is correct.

9. The more important question is whether the facts and circumstances of the case attract Section 187 of the Act or Section 188 of the Act. In this connection, it is necessary to advert to Section 182 to Section 189 of the Act. Section 182 refers to assessment of registered firms. Section 183 deals with assessment of unregistered firms. Section 184 deals with application for registration of firms and grant of registration. The grant of registration shall be effective for every subsequent assessment year. Two exceptions to this rule are contemplated in the proviso to Section 184(7). The first proviso reads "provided that there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted." Sub-section (8) of Section 184 states that where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section. In other words, though registration granted shall be effective for every subsequent

assessment year as evident in the two provisos to section 184(7), the firm shall apply for fresh registration for the assessment year. Section 185 of the Act deals with procedure on receipt of the application and the order to be passed thereon. Section 186 deals with cancellation of registration. Section 187 reads thus :

"187. Change in constitution of a firm.--(1) Where at the time of making an assessment u/s 143 or Section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment :

Provided that-

(i) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same ; and

(ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

(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."

10. The principle is that assessment shall be made on the firm as constituted at the time of making the assessment u/s 143 or Section 144 ; where at the time of making an assessment, it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment but the income of the previous year shall be apportioned between the partners who, in such years, are entitled to receive the same and if the tax assessed on a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment. Sub-section (2) indicates when there is a change in the constitution of a firm for the purpose of this section. The controversy in this case relates to the interpretation to be placed on Clause (a) of Sub-section (2). Section 188 deals with succession of one firm by another firm. It reads as follows :

"188. Succession of one firm by another firm,--Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by Section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of Section 170."

11. Section 189 deals with a case where a firm is dissolved or the business is discontinued. Assessment shall be made as if no such discontinuance or dissolution had taken place. Every partner or legal representative of a partner shall be jointly and severally liable for the amount of tax, penalty, etc.

12. The above provisions have used the words "firm", "partner", "partnership firm". Section 2(23) of the Act states that, unless the context otherwise requires, the expression "firm", "partner" or "partnership" have the meanings assigned to them in the Indian Partnership Act, 1932, but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership.

13. The scheme of the above provisions shows that, in so far as partnership firms are concerned, a provision has been made for three contingencies in an exhaustive manner. The first contingency is what is regarded as change in constitution of a firm and is dealt with in Section 187. In this case, assessment shall be made on the firm as constituted at the time of making the assessment. The case of succession of one firm by another is dealt with in Section 188. In such a case, separate assessment has to be made in regard to each firm u/s 170. Section 170 lays down the general rule in regard to cases of succession to business otherwise than on death. The tax liability would be on the predecessor and successor in proportion to the income up to and from the date of succession. The third contingency relates to cases where the business or profession carried on by a firm has been dissolved or business has been discontinued and is dealt with in Section 189. In such a case assessment has to be made of the total income of the firm as if no dissolution or discontinuance had taken place. There is no dispute that the present is not a case attracting Section 189. While the assessee contends that the case is attracted by Section 188, according to the Revenue, Section 187 governs the case.

14. We have been referred to a large number of decisions of various courts arising in cases where, after the death of a partner or partners, the business of the firm had been continued taking in new partners. In some of the cases, the deed of partnership stipulated that notwithstanding the death of a partner, the partnership is to be continued taking the heir of the deceased partner as a new partner. In some other cases, the partnership deed is silent in this regard. High Courts have differing views on the question. Different Benches of the same High Court have taken different views. A Full Bench of three judges of the Andhra Pradesh High Court in *Addl. CIT v. Visakha Flour Mills* [1977] 108 ITR 466, the High Court of Commissioner of Income Tax Vs. *Kelukutty*, the Madhya Pradesh High Court in *Vimal and Amar Talkies Vs. Commissioner of Income Tax*, a Full Bench of the Punjab and Haryana High Court in *Nandlal Sohanlal, Jullundur Vs. The Commissioner of Income Tax, Patiala*, a Full Bench of the Karnataka High Court in *Commissioner of Income Tax, Karnataka-I Vs. Shambulal Nathalal and Company*, and the Madras High Court in *Commissioner of Income Tax, (Central), Madras Vs. Alagappa Cotton Mills*, have taken the view that, in the facts and

circumstances, death of a partner followed by the taking of a fresh partner did not result in dissolution of partnership and that since some pre-existing partners continued to be partners of the firm, there was a change in the constitution of the firm as explained in proviso (a) to Sub-section (2) of Section 187 of the Act. Some of these decisions have taken the view that even where there was succession of one firm by another as contemplated by Section 188 of the Act, since the case would attract Section 187 also it is the former section which would govern and hence assessment has to be made for the whole year on the firm as in existence at the time of the assessment. On the other hand, a Full Bench of the Allahabad High Court in *Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another*, the Gujarat High Court in *Vinodkumar Ratilal Vs. Commissioner of Income Tax, Gujrat II*, and in *Addl. Commissioner of Income Tax, Gujarat Vs. Harjivandas Hathibhai*, a Full Bench of five judges of the Andhra Pradesh High Court in *The Additional Commissioner of Income Tax, (Andhra Pradesh, Hyderabad) Vs. Vinayaka Cinema, Nellore*, (overruling *Addl. CIT v. Visakha Flour Mills [1977] 108 ITR 466*), have taken the contrary view, namely, that death of a partner led to the dissolution of the firm and the mere fact that one or more partners of the pre-existing firm continued to be partners of the firm as constituted at the time of the assessment would not attract Section 187 of the Act and it would be a case of succession of one firm by another governed by Section 188 of the Act and, therefore, separate assessments have to be made on the predecessor firm and the successor firm in accordance with Section 170. The reasons given in the various decisions in support of each view are more or less common.

15. One set of decisions holds that there is a conflict between the proviso to Section 187 of the Act and the principle of partnership as found in the Partnership Act and, in case of conflict, the former would prevail over the latter, that the proviso referred to has to be given a wide connotation so as to take in every case of reconstitution including a case of death and taking new partners, that even if it is a case of dissolution u/s 188, Section 187 has to prevail in view of the words in Section 188 to the effect "and the case is not one covered by Section 187". The reasoning in the contrary line of decisions is that there is nothing in the provisions of the Income Tax Act and in particular in Section 187 indicating a legislative intention to depart from the principles relating to partnership found in the Partnership Act, that the proviso to Sub-section (2) of Section 187 has to be given due meaning consistent with the general principles of law relating to partnership firms, that Section 187 would apply only to a reconstituted firm as contemplated in the Partnership Act, that a case of dissolution followed by taking new partners under a new partnership deed would be governed by Section 188 and the words in Section 188 referred to earlier should not be given too much importance.

16. We do not think we should go into an elaborate discussion of the above decisions since the principle of law which would govern the facts of the case appears to be clear and unambiguous. The present is a case of a firm originally

constituted with only two partners where one of them died, the death being followed by taking in new partners. By virtue of Section 2(23) of the Act, the expressions "firm", "partner", "partnership", have the same meaning as assigned to them in the Indian Partnership Act, 1932. According to the definition, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name". The firm is not a legal entity, except in a very minor and limited sense for the purpose of the CPC and the Income Tax Act, but is only a collective or compendious name for all the partners. One of the basic elements of partnership" is the agreement entered into between the persons concerned. In order that there should be an agreement there must at least be two persons willing to join as partners. Whatever be the legal consequence of one among the three or more partners dying or retiring, there can be no controversy that when one among the only two partners dies or retires, the partnership de jure and de facto ceases to exist. It may be that ultimately the surviving partner takes over the entire business of the firm paying off the retiring partner or the heirs of the deceased partner or having done so he takes a new partner and they together pay off the retiring partner or the heirs of the deceased partner or he takes as partner the heir of the deceased partner. Whatever be the contingency which may happen, the inevitable consequence of one among the two partners dying or retiring is the total extinction in the eye of law of the partnership or firm, since one partner alone remains at the point of time of retirement or death and one partner cannot constitute the remnant firm. It is possible to distinguish a case like the present from the case of a firm consisting of three or more partners and one of them dying or retiring and the business being continued by the remaining partners with or without new partners, since in such a case the surviving partners are at least two in number and in the eye of law they can constitute a partnership by themselves. The absence of plurality of partners surviving the death or retirement of a partner, it appears to us, makes all the difference and distinguishes the present case from those cases.

17. From the catena of decisions cited before us, we will pick out only those cases which dealt with a partnership of two partners. They are Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, and Vinodkumar Ratilal Vs. Commissioner of Income Tax, Gujrat II, . It would also be useful to refer to Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, Commissioner of Income Tax Vs. Ram Bilas Purshottam Dass, and Commissioner of Income Tax Vs. Sant Lal Arvind Kumar, .

18. In Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, the Supreme Court dealt with the case of a partnership consisting of only two partners and the deed contained a contract to continue the partnership in the case of death of a partner by admitting the legal representatives or nominees of the deceased partner. The Income Tax Officer

denied registration to the partnership on the ground that after the death of one of the partners the partnership automatically got dissolved and thereafter the surviving partner and the heir of the deceased partner could be treated only as an association of persons. He treated the income as that of an association of persons. His decision was confirmed by the superior authorities including the Tribunal, but the High Court overruled the same. It was argued for the Revenue that Section 42 of the Indian Partnership Act, 1932, which stipulated, inter alia, that subject to contract between the partners a firm is dissolved with the death of a partner, applies only to a partnership having more than two persons. This was resisted by the assessee for whom it was argued that the heir would automatically be inducted into the partnership and, therefore, it was not a case of dissolution. The assessee sought the support of Section 30 of the Indian Partnership Act. It was argued, inter alia, that subject to a contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners. The Supreme Court observed (at page 515) :

"The fundamental principle of partnership, therefore, is that the relation of partnership arises out of contract and not out of status.... Section 42 can be interpreted without doing violence either to the language used or to the said basic principle. Section 42(c) of the Partnership Act can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved ; but if there is a contract to the contrary, the surviving partners will continue the firm. On the other hand, if one of the two partners of a firm dies, the firm automatically comes to an end and, thereafter, there is no partnership for a third party to be introduced therein and, therefore, there is no scope for applying Clause (c) of Section 42 to such a situation. It may be that pursuant to the wishes or the directions of the deceased partner the surviving partner may enter into a new partnership with the heir of the deceased partner, but that would constitute a new partnership. In this light Section 31 of the Indian Partnership Act falls in line with Section 42 thereof." (emphasis supplied).

19. The Supreme Court held that for the relevant assessment year the status of the assessee was that of a firm within the meaning of Section 16(1)(b) of the Indian Income Tax Act, 1922, and the Tribunal was in error in reaching the conclusion that the parties could not be regarded as partners since the surviving partner and the new partner represented their branch of families.

20. The decision in Dahi Laxmi Dal Factory Vs. Income Tax Officer and Another, , dealt with the case of a partnership firm of two partners with three minors admitted to the benefits of the partnership. One partner died and on the next day his son and the surviving partner took over the business and a fresh partnership deed was executed admitting the three minors to the benefits of the partnership. The High Court held that Section 187 of the Income Tax Act applied only when a firm is reconstituted as per Sections 31 and 32 of the Indian Partnership Act, but when a firm is dissolved either by agreement of the 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 Act, particularly in the absence of a contract to the contrary in the partnership deed stipulating for non-dissolution in the event of death of a partner. The High Court in this connection observed (at page 525):

"Now, in the present case, the old firm was constituted by two partners. One of them died and there was no stipulation in the partnership deed that the firm shall not stand dissolved on the death of a partner. Indeed, even if there had been such a stipulation the firm could not have been saved from dissolution because after the death of Jethalal only one partner was left and one man cannot constitute a firm. "

21. It was held to be a case of succession governed exclusively by Section 188.

22. The Gujarat High Court in *Vinodkumar Ratilal Vs. Commissioner of Income Tax, Gujrat II*, also dealt with a case of a firm with two partners.

23. The Allahabad High Court in *Commissioner of Income Tax Vs. Ram Bilas Purshottam Dass*, dealt with a case of a firm of two partners, one of whom died and the partnership deed did not contain a contract to the contrary. The surviving partner took a new partner after a few days. The court observed that a contract to the contrary may prevent dissolution of a partnership notwithstanding the death of a partner and assure continuity of the firm, but the position is different v/hen the firm consists of only two partners because the moment one of the two partners dies, the firm automatically comes to an end. It was, therefore, held that the proviso to Clause (a) of Sub-section (2) of Section 187 of the Act would not apply.

24. The Delhi High Court in *Commissioner of Income Tax Vs. Sant Lal Arvind Kumar*, dealt with two cases one of which was a case of a firm not of two partners but of four partners. We refer to this decision since it has been approved by the Supreme Court. In that case, the partnership deed did not stipulate that the firm would not stand dissolved on the death of a partner. On the death of a partner the other partners took as partner a grandson of the deceased. It was held that Section 187 of the Act would not apply but that Section 188 would apply. It was held that change in the constitution of the firm is quite different from dissolution, that the provisions of the Income Tax Act do not purport to alter or modify the principles of the Partnership Act. It was also indicated that the purpose of the proviso to Section 187(2) was not to expand the scope of Section 187 but on the other hand to restrict it. In the course of the discussion, the Delhi High Court observed (at pages 390, 391) :

"Another instance of anomaly would be that logically the Department's interpretation should be applicable whatever the reasons for dissolution of the earlier firm might be. Thus, for instance, if there are two partners and one of them dies and the other partner continues the business by entering into a fresh partnership with another person, it would be a change in the constitution. Again

if partners in a firm are unable to get on with each other and as a result of quarrels among themselves get the firm dissolved compulsorily under the orders of the court, still there would be only a change in the constitution, if the business happens to continue in the hands of any one of them in partnership with some others. It should be remembered that partnership is a relationship born of an agreement. It can be dissolved by agreement or where there is no agreement, by an order of the court in certain circumstances. To say that such a relationship would subsist notwithstanding the decision of the partners to put an end to its continued existence is a far reaching consequence which, in our opinion, should not be accepted unless there is clear statutory language to that effect."

25. The above observation of Ranganathan J., as He then was, clearly supports the assessee.

26. In Wazid Ali Abid Ali Vs. Commissioner of Income Tax, Lucknow, the Supreme Court referred to the above decision of the Delhi High Court. The Supreme Court observed (at page 778) :

"The Delhi High Court, however, held in the case of Commissioner of Income Tax Vs. Sant Lal Arvind Kumar, that Section 187 of the Income Tax Act came into operation and applied only when there was in the eye of law a firm with continued existence and not to a case where under the law one firm had ceased to exist and another came into existence. The High Court observed that the purpose of Sub-section (2) of Section 187 was not one of expansion of the normal concept of a change in the constitution of a firm but was really one of limitation ; the purpose was not to say that a firm would continue in spite of dissolution but rather to say that, even in a case where there was only a change in the constitution, Sub-section (1) would not apply if the partners before or after the change were not common. It is not correct, according to the High Court, to say that Section 187(2) contemplated a change in all cases where the business continued though in the hands of a different firm provided there were common partners. The High Court was of the view that though creating a mild ambiguity, the language of Section 188 is not only not inconsistent or contradictory but in a way is to clarify the meaning of Section 187 and to exclude the possibility of the common law doctrine regarding the personality of a firm even in cases of a mere change in the constitution. The concept of partnership, it was held, is one of agreement between the partners. If the partners agreed, not that one partner should go out and another should come in, but that on a particular event happening, the firm should be treated as dissolved, they are entitled to say so, and what the partners have disrupted, it is not for the Department to unite unless there is specific authorisation in the Act. Where there is, however, no agreement to treat the firm as continuing notwithstanding the death of a partner, the partners have no option to treat the firm as continuing. Under the Indian Partnership Act, 1932, the firm gets dissolved and the Income Tax Officer is not entitled to ignore this consequence. There is nothing in the language of Section 187, 188 or 189, according to the High Court, which precludes the application of

the partnership law principles even under the Income Tax Act. It was accordingly held by the High Court that where the partnership deed of a firm did not contain any provision that the death of a partner would not dissolve the firm, one of the partners of the firm died in the middle of the accounting period and thereafter a fresh deed was executed under which the surviving partners took a fresh partner in the place of the deceased and continued to carry on the business, the case was one of succession and not one of change in the constitution and separate assessments had to be made in regard to the incomes. With respect, we agree that where in a case, there is a change in the constitution of the firm by the taking of a new partner and the old firm is succeeded by a new firm then, in such a case, there might be succession and there could be two assessments as contemplated u/s 188 of the Act. We accept the reasoning of that decision."

27. In the present case, one of the two partners constituting the firm retired and subsequently the surviving partner and a new partner continued the business under a new deed. It is clear that the partnership ceased to exist on the retirement of one of the two partners. That was the logical consequence of retirement of one of the only two partners. There is nothing in the scheme of Section 187 of the Act indicating a legislative intention to totally ignore fundamental principles underlying a partnership as laid down in the Partnership Act and creating a situation where the firm would be deemed to have survived with only one partner surviving. This cannot be regarded as a case of reconstitution of a firm under the proviso to Sub-section (2) of Section 187 at all. It is a case of dissolution and a new firm taking over the business of the old firm, a case of succession covered by Section 188 of the Act. The assessment in this case should have been made u/s 188 and not Section 187 of the Act and two separate assessments ought to have been made for the two parts of the year separated by the date of dissolution. Therefore, we hold that the order of the Commissioner of Income Tax in this behalf is correct and that of the Tribunal is wrong.

28. In view of what we have indicated above, it must necessarily follow that the order of the Commissioner of Income tax (Appeals) and the decision of the Tribunal upholding his order that the erstwhile firm is entitled to continuation of registration for the period from April 1, 1976, to June 30, 1976, is correct.

29. In the result, we answer the questions as follows :

(i) Question No. 1 is answered in favour of the assessee and against the Revenue. The order of the Commissioner of Income Tax is correct.

(ii) Question No. 2 is answered in favour of the assessee and against the Revenue. The order of the Commissioner of Income Tax (Appeals) in this behalf is correct.

(iii) Question No. 3 is answered in favour of the assessee and against the Revenue. The order of the Commissioner of Income Tax (Appeals) and the decision of the Tribunal in this behalf are correct.

(iv) Question No. 4 is answered in favour of the assessee and against the Revenue. The order of the Commissioner and the decision of the Tribunal in this behalf are correct.

30. The reference is disposed of as indicated above.

31. A copy of this judgment shall be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal. There shall be no order as to costs.

W.A. Shishak, J.

32. I agree.