(1985) 12 RAJ CK 0034

In the Rajasthan High Court

Case No : .I.T.R. No. 42 of 1976

Pratap Chitrapat APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-12-1985

Acts Referred:
Income Tax Act, 1961 — Section 187(1), 187(2)

Citation : (1987) 163 ITR 559

Hon'ble Judges : M.C. Jain, J;J.R. Chopra, J

Bench : Division Bench

Advocate : D.S. Shishodia, for the Appellant; B.R. Arora, for the Respondent

Judgement

M.C. Jain, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short "the Tribunal"), has referred the following questions for the opinion of this court, vide its statement of the case dated June 30, 1976 :

"(1) Whether, on the facts and in the circumstances of this case, the Tribunal was right in holding that the assessee-firm was not dissolved on the death of the partner, Shri Ganeshilal, and that it was merely a case of change in the constitution of the firm ?

(2) If the answer to the above question is in the negative, whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 187(1),(2) of the Income Tax Act, 1961, would nevertheless govern the assessment of the firm ?"

2. The questions referred to us stand already answered by this court and this court has taken the view that on the death of a partner of the firm, the firm stands dissolved and it is not a case of change in the constitution of the firm. In view of the above legal position, the provisions of Section 187(1) and (2), Income Tax Act, 1961 (hereinafter referred to as "the Act"), would not apply. Reference in this connection may be made to the decisions of this court in Addl. CIT v. M.K.M. Moosa Bhoy Amin [1984] 148 ITR 88 and Surana and Co. Vs.

Commissioner of Income Tax,

3. In view of the aforesaid decisions of this court, our answer to both these questions is in the negative and we hold that the Tribunal was not right in holding that the assessee-firm was not dissolved on the death of the partner, Shri Ganeshilal, and that it was merely a case of change in the constitution of the firm. We also hold that the Tribunal was not right in holding that the provisions of Section 187(1) and (2) of the Act would nevertheless govern the assessment of the firm. Thus, both the questions are answered in favour of the assessee.

4. In the circumstances of the case, the parties shall bear their own costs of this reference.

5. Let the answer be returned to the Tribunal in accordance with Section 260(1) of the Act.

