

(1989) 03 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 136 of 1986

Ramchand Moolchand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 187(1), 256(1)

Citation : (1989) 77 CTR 12 : (1989) 179 ITR 1

Hon'ble Judges : G.G. Sohani, Acting C.J.; R.K. Verma, J

Bench : Division Bench

Advocate : Bagadiya, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following questions of law to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the firm was not dissolved on the death of Shri Ramchandra and that it was a case of a change in the constitution of the firm and that, therefore, the firm could not be granted renewal of registration for the period April 1, 1976, to August 25, 1976, and that a single assessment for the whole year has to be made in the status of an unregistered firm ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Income Tax Officer having assessed two of the partners on their share income, could also assess the firm as an unregistered firm ?"

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee is a partnership firm and the assessment year in question is 1977-78. One of the partners of the firm, Ramchandra, died on August 25, 1976.

Two returns were filed in the name of the assessee-firm --one for the period from April 1, 1976, to August, 25, 1976 and the other for the period from August 26, 1976, to March 31, 1977. In the statement accompanying the return, it was stated by the assessee that, after the death of one of the partners, the firm stood dissolved and the remaining partners continued to wind up the business in the status of an association of persons. The assessee submitted an application in Form No. 12 in respect of the first period claiming registration. The Income Tax Officer held that registration could not be granted to the assessee for a part of the previous year and that the case of the assessee was covered by Section 187(1) of the Act for the purpose of assessment. The appeal preferred by the assessee was rejected. On further appeal before the Tribunal, the Tribunal upheld the order passed by the Income Tax Officer and dismissed the appeal. The Tribunal also rejected the contention urged on behalf of the assessee that the Income Tax Officer, having assessed two partners on their share of income, could not assess the firm as an unregistered firm. Aggrieved by the order passed by the Tribunal, the assessee sought reference and it is at the instance of the assessee that the aforesaid two questions of law have been referred to this court for its opinion.

3. Now, as regards question No. (1), the Tribunal has found that there was a clause in the partnership deed of the firm that death of a partner would not result in the dissolution of the firm and that the subsequent conduct of the surviving partners disclosed that the business of the firm was carried on by them with altered profit-sharing ratio. The Tribunal, therefore, held that the dissolution of the firm on August 25, 1976, had not taken place. In view of this finding, which is based on the material on record, the Tribunal, in our opinion, was justified in holding that the firm was not dissolved on the death of Ramchandra and that it was a case of a mere change in the constitution of the firm.

4. On the question as to whether the firm could be granted renewal of registration for the period from April 1, 1976, to August 25, 1976, the matter, in our opinion, is concluded by the decision of the Supreme Court in *Wazid Ali Abid Ali Vs. Commissioner of Income Tax, Lucknow*, . In view of that decision, it must be held that the firm would be entitled to renewal of registration from April 1, 1976, to August 25, 1976, and that the firm would be assessed as a registered firm till August 25, 1976, and as an unregistered firm for the remaining part of the previous year.

5. As regards question No. 2, the Tribunal held that the assessments made on the partners were protective in view of the noting made in the assessment order passed in the case of two out of the four partners that it was subject to rectification u/s 155 of the Act. In view of the decision of the Supreme Court in (1966) 60 ITR 95 (SC) it cannot be held that the Income Tax Officer had not exercised his option. The Tribunal, in our opinion, erred in holding that the Income Tax Officer, having assessed two of the partners on their share income, could also assess the firm as an unregistered firm.

6. Reference answered accordingly. In the circumstances of the case, the parties shall bear their own costs of this reference.