

(2009) 04 AHC CK 0126

Allahabad High Court

Case No: None

Commissioner of Income Tax
and Another

APPELLANT

Vs

Bharat Steel Rolling Mills

RESPONDENT

Date of Decision: April 20, 2009**Acts Referred:**

- Income Tax Act, 1961 - Section 187, 188, 260A

Citation: (2009) 313 ITR 406**Hon'ble Judges:** Ritu Raj Awasthi, J; R.K. Agrawal, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

1. The present Income Tax appeal filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), has been admitted, vide order dated January 24, 2008, on the following substantial questions of law:

1. Whether, in the facts and circumstances of the case, the Tribunal is legally justified in law in holding that two separate assessments be made for the separate periods ignoring the fact that this is a case covered u/s 187(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") inasmuch as this was not a case of dissolution of the firm but only a change in constitution of the firm and the reliance was placed by the Tribunal on the cases of [Wazid Ali Abid Ali Vs. Commissioner of Income Tax, Lucknow](#), and [Commissioner of Income Tax Vs. Sant Lal Arvind Kumar](#), have wrongly been interpreted rather these cases are in favour of the Revenue ?

2. Whether, in the facts and circumstances of the case, the Tribunal is legally justified in deleting the addition of Rs. 2,00,155 holding that the amount was paid by the earlier firm which stood dissolved and no addition can be made in the hands of a new firm and has ignored the fact that the provisions of Section 187(1) of the Act is applicable in this case ?

3. Whether, in the facts and circumstances of the case, the Tribunal is legally justified in law in directing to allow depreciation for both the periods holding that this was the case of dissolution of firm and ignored the fact that the case is covered in Section 187(1) of the Act?

2. Briefly stated the facts giving rise to the present appeal are as follows:

3. The present appeal relates to the assessment year 1978-79.

4. The previous year ended on March 31, 1978. The respondent-assessee is a firm and was constituted with 13 partners, which was engaged in the manufacturing of M S Rounds. With effect from July 1, 1977, two partners, viz., Shri Subhash Chand and Smt. Kailashwati, retired and by mutual consent, the partnership was treated as dissolved.

5. On July 1, 1977, two other persons, viz., Shri Amrit Lal and Shri Narender Kumar joined as partners along with the eleven remaining partners of the firm and a new partnership deed was executed on July 2, 1977, which was made effective from July 1, 1977, itself.

6. For the assessment under consideration, the firm filed two returns for the two periods, i.e., one for the period April 1, 1977, to June 30, 1977, and the other for the period July 1, 1977, to March 31, 1978, claiming that two separate assessments be made for the two periods. The Assessing Officer observed that there was no change in the name, business, assets or liabilities of the firm and even the two newly admitted partners belonged to the same group to which the two retiring partners belonged. Even their share of profits were the same as those of the retiring partners. He, therefore, held that it was merely a change in the constitution of the firm and that merely by mentioning it to be a dissolution in the deed, did not conclusively prove it to be a case of dissolution of the firm. Accordingly, a single assessment for the whole year was made. The action of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals). However, the Tribunal by the impugned order dated August 30, 2004, while partly allowing the appeal, has held that when there is a specific agreement that the old firm stood dissolved, the Department is not justified in uniting them, irrespective of the fact that the same name, business, assets and liabilities are continued with. Accordingly, it directed that two assessments for the two periods be made as claimed by the assessee. The Revenue's appeal is before us.

7. We have heard Sri A. N. Mahajan, learned standing counsel for the Revenue and Sri Suyash Agrawal, learned Counsel appearing for the respondent.

8. Sri Mahajan, learned Counsel submitted that as in the present case, two out of 13 partners retired and the firm continued with two new partners taken in the firm immediately on the next date and the business and liability having been taken over. On the other hand, notwithstanding the fact that the deed of dissolution was

executed, in view of the provisions of Clause (a) of Sub-section (2) of Section 187 of the Act, it will be a case of reconstitution and not a case of succession and, therefore, only one assessment ought to have been made for the two periods and not two, as directed by the Tribunal. In support of the aforesaid plea, he has relied upon the decisions of this Court and of the hon"ble Supreme Court, namely, [Commissioner of Income Tax Vs. Ratan Lal Garib Das,](#) [Commissioner of Income Tax Vs. Basant Behari Gopal Behari and Company,](#) [Commissioner of Income Tax Vs. Indralok Picture Palace,](#) [Commissioner of Income Tax Vs. Ram Jas Rai Askaran Das,](#) and [COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE,](#)

9. Sri Suyash Agrawal, learned Counsel on the other hand, submitted that none of the decisions relied upon by the learned standing counsel would be applicable to the facts of the present case, inasmuch as, a deed of dissolution was specifically drawn up and acted upon between the partners and, therefore, the firm stood dissolved. It would be a case covered u/s 188 of the Act, i.e., a case of succession and not a case of reconstitution. He has relied upon a decision of the Gujarat High Court in the case of [Commissioner of Income Tax Vs. Ketan Chemicals,](#)

10. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

11. We find that the facts are not in dispute. Two of the 13 partners retired on June 30, 1977, and two new partners joined on July 1, 1977, with a new partnership deed having been executed on July 2, 1977, with effect from July 1, 1977. The business, which was being carried on by the erstwhile firm with the assets and liabilities had been continued by the new firm.

12. We may mention here that in law a firm is not a legal entity. However, under the Income Tax Act, a firm has been treated as assessee and, therefore, for the purposes of Income Tax the provisions of the Income Tax Act, 1961, would have an overriding effect over the provisions of the Indian Partnership Act, 1932, or any other general law.

13. In the present case, the Income Tax Act, 1961, specifically provides for a change in the constitution of the firm. Sub-clause (a) of Sub-section (2) of Section 187 of the Act provides the circumstances and situation under which a change in the constitution of the firm has to be treated. It specifically provides 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.

14. From a bare reading of the aforesaid provisions, we find that except in a case where the firm is dissolved on the death of any of its partners if the conditions mentioned either in Clause (a) or (b) are fulfilled or exist in the given case it will be treated as a change in the constitution of the firm only, the dissolution of the firm in the case of death of any of its partners has been taken out from a change in the constitution of the firm.

15. That being the position, the execution of the deed of the dissolution in the present case where two partners have retired and two new partners have come in would not make any difference and it would be a case of reconstitution of the firm.

16. We find that similar view has been taken by the Division Bench of this Court in the case of [Commissioner of Income Tax Vs. Ratan Lal Garib Das](#), by the hon"ble Mr. Justice M. Katju (as he then was), as also in the case of [Commissioner of Income Tax Vs. Ram Jas Rai Askaran Das](#), In the case of [COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE.](#), the apex court has considered the scope of Section 187 of the Act and has held as follows (page 359):

Section 187 says that 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 it is constituted at the time of making the assessment. "Change in the constitution of the firm" is defined for the purpose. The relevant part of the definition states that if one or more of the partners cease to be partners 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, there is a change in the constitution of the firm. These provisions would apply to a firm which survives upon the death of a partner. They would apply to the case of a partnership where a partner dies and the partnership deed provides that death shall not result in the dissolution of the partnership.

17. In the case of [Commissioner of Income Tax Vs. Ketan Chemicals](#), , the Gujarat High Court had no doubt held that there would be two separate assessments in the case where the deed of dissolution has been executed but we with great respect are unable to persuade ourselves to agree with the above decision, in view of the Division Bench decisions of this Court in the cases of [Commissioner of Income Tax Vs. Ratan Lal Garib Das](#), and [Commissioner of Income Tax Vs. Ram Jas Rai Askaran Das](#),

18. In view of the forgoing discussions, we are of the considered opinion that the case in hand is covered u/s 187(1) of the Act and the Tribunal was not justified in deleting the addition of Rs. 2,00,155 on the ground that there was no question of any addition to be made in the hands of new firm and has ignored the provisions of Section 187(1) of the Act, as two assessments could not be made separately for the

two periods.

19. The substantial questions of law on which the present appeal has been admitted are answered accordingly. The appeal succeeds and is allowed. However, the parties shall bear their own costs.