

## Commissioner of Income Tax Vs Dharam Kirti Saran Satish Chandra

**Court:** Allahabad High Court

**Date of Decision:** Dec. 5, 2002

**Acts Referred:** Income Tax Act, 1961 " Section 187, 256

**Citation:** (2003) 131 TAXMAN 248

**Hon'ble Judges:** Yatindra Singh, J; M. Katju, J

**Bench:** Full Bench

**Final Decision:** Disposed Of

### Judgement

This is an Income Tax Reference u/s 256(1) of the Income Tax Act, 1961. In which the following questions have been referred for our opinion :

1. Whether on the facts and in the circumstances of the case, the provisions of section 187 were not applicable in this case ?

2. Whether on the facts and in the circumstances of the case, the learned Tribunal was legally correct in holding that a composite assessment was

not warranted in this case?

3. Whether on the facts and in the circumstances of the case, the assessee, in law, was entitled to adopt a previous year different from the one

adopted by it earlier".

2. The relevant assessment year is 1978-79. During this assessment year one of the partners of the assessee-firm, Dharam Kirti Saran, died on 8-

2-1976 and there was no provision in the partnership deed that even after death of one of the partners the firm will continue. Hence in view of the

decision of the Supreme Court in COMMISSIONER OF INCOME TAX Vs. EMPIRE ESTATE., , it is a case of dissolution and not mere re-

constitution of the firm. Consequently there have to be two assessments and not a single assessment. We, therefore, decide the question Nos. 1

and 2 in the affirmative, i.e., in favour of the assessee and against the department. In view of our answer to question Nos. 1 and 2, it is not

necessary to express our opinion regarding question No. 3. The reference is decided accordingly.