

(2002) 12 AHC CK 0128

Allahabad High Court

Case No: IT Ref. No. 140 of 1983 5 December 2002

Commissioner of
Income Tax

APPELLANT

Vs

Dharam Kirti Saran
Satish Chandra

RESPONDENT

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.