
(1991) 03 AHC CK 0143

Allahabad High Court

Case No: IT Reference No. 163 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Porwal and Co.

RESPONDENT

Date of Decision: March 6, 1991

Acts Referred:

- Income Tax Act, 1961 - Section 187(2), 256(1)

Citation: (1992) 60 TAXMAN 147

Hon'ble Judges: B.P. Jeevan Reddy, C.J; S.R. Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. u/s 256(1) of the income tax Act, 1961 the Tribunal has stated following three questions:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the firm got automatically dissolved on the death of Shri Phool Chandra partner and thereafter the business was carried on by a new firm consisting of the remaining three partners?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in not accepting the contention of the department that it was a case of mere change in constitution of the firm within the meaning of section 187(2) of the income tax Act, 1961 and that the income tax Officer was justified in making one single assessment after clubbing the income of both the periods?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that two separate assessments should be made on the basis of the two returns filed by the assessee before the income tax Officer?

The assessee is a partnership firm. For the assessment year 1974-75, the assessee filed two returns of income, both in the name of Porwal & Co. one in respect of the period 10-4-1973 to 1-7-1973 and the other from 1-7-1973 to 31-3-1974. The assessee claimed that one of the partners Shri Phool Chandra died on 27-6-1973 and that thereafter a fresh partnership deed was executed between the remaining three partners on 1-7-1973. They also pointed out that the first partnership deed did not contain a clause that death shall not operate as dissolution, nor did it provide for the heir or successor of the deceased partner being inducted in place of the deceased partner. The facts stated by the assessee were found to be correct. Even so the ITO held that it was a case of reconstitution of firm and made one assessment. On appeal, the AAC agreed with the assessee that it was a case of succession of one firm by another and allowed the appeal. The department carried the matter to the Tribunal in appeal which too was dismissed, agreeing with the opinion expressed by the AAC.

2. Once there is no clause in the partnership deed that death shall not result in dissolution, the death of a partner does result in dissolution. In this case it appears that the partnership deed specifically stated that duration of the business will be "at will". Moreover, after the death of one of the partners, a new partnership deed was also executed by the remaining three partners. In such a situation the Tribunal was right in holding that it was not a case of reconstitution but succession. For the above reasons, the questions referred are answered in the affirmative, i.e., in favour of the assessee and against the revenue. No order as to the costs.