

(1985) 01 MP CK 0010

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 122 of 1981

Ayodhya Prasad
Parmeshwaridas

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Jan. 23, 1985

Acts Referred:

- Income Tax Act, 1961 - Section 187, 187(2)
- Taxation Laws (Amendment) Act, 1984 - Section 184(7), 33

Citation: (1985) 48 CTR 145 : (1985) 156 ITR 554 : (1985) 23 TAXMAN 445

Hon'ble Judges: G.L. Oza, C.J; B.M. Lal, J

Bench: Division Bench

Judgement

Oza, C.J.

This is a reference made by the Income Tax Appellate Tribunal for answering the following questions :

"(1) Whether on the material on record, the findings of the Appellate Tribunal holding that the firm was not entitled to registration u/s 185 was legally correct?

(2) Whether In view of the fact that by the death of partner, Gopiram, on October 2, 1974, the firm was dissolved and the order refusing to grant continuation of registration u/s 184(7) till October 2, 1974, and holding that there was a change in the constitution of the firm, is legally correct ?

(3) Whether in view of the unsettled position of law in regard to a change in the constitution or succession of the firm, the finding that the applicant should have made an application in Form No. 11A before the end of the accounting year and that the delay could not be condoned, was legally correct ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal committed an error of law in holding that only one assessment has to be made in

the entire previous year ?

2. Learned counsel for the assessee drew our attention to Section 33 of the Taxation Laws (Amendment) Act, 1984, by which Sub-section (2) of Section 187 of the Income Tax Act, 1961, has been amended and contended that this amendment has been given retrospective effect and as this Amendment Act itself received the assent of the President in September, 1984, the Tribunal while making this reference had no occasion to consider the impact of this amendment although this amendment has been made retrospective from April 1, 1975, this will have to be considered in this case as the assessment year is 1975-76, the previous year being the year ending Diwali, 1974. It was, therefore, contended by the learned counsel for the assessee that the Tribunal be directed to consider the effect of this amendment and send an additional statement of the case.

3. Learned counsel for the Revenue, on the other hand, contended that this amendment will not be effective because of the findings arrived at by the Tribunal in this case and he, therefore, contended that it is not necessary for the Tribunal to consider the effect of the amendment. In other words, the learned counsel for the Revenue wants us to answer the question which is not referred, i.e., as to whether this amendment will or will not be applicable to the facts of this case.

4. Section 33 of the Taxation Laws (Amendment) Act, 1984, reads :

"33. Amendment of Section 187.--In Section 187 of the Income Tax Act, to Sub-section (2), the following proviso shall be added and shall be deemed to have been added with effect from the 1st day of April, 1975, namely :--

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."

5. This clearly indicates that the amendment has been introduced in Section 187 by adding a proviso and it has also been clearly stated that this amendment shall be deemed to have come into effect from April 1, 1975. It is, therefore, not disputed that this amendment will be effective at the time at which the assessment in this case was being made and for the assessment period.

6. It is also clear that as this Amendment Act came into force in October, 1984, it was not there before the Tribunal when this reference was made by the Tribunal to this court. Under these circumstances, in our opinion, it would be proper that the Tribunal considers the effect of this amendment and further consider whether any additional statement of the case is necessary. It is, therefore, directed that the Tribunal shall consider the effect of this amendment on the facts of this case and shall send an additional statement of the case.

7. A copy of the order be given to the learned counsel for the parties on payment of necessary charges.