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COMMISSIONER OF Income Tax Vs SUDARSHAN AND CO.

Miscellaneous Civil Case No. 375 of 1984

Court: Madhya Pradesh High Court

Date of Decision: March 14, 1988

Acts Referred:
Income Tax Act, 1961 â€" Section 187

Citation: (1988) 74 CTR 146 : (1988) 174 ITR 524

Hon'ble Judges: G. G. Sohani, Acting C.J.

Bench: Division Bench

Judgement

G. G. SOHANI, ACTG. C.J. - By this application u/s 256 (1) of the Income Tax Act, 1961 (hereinafter referred to as ""the Act""), the Income Tax

Appellate Tribunal, Indore Bench, Indore, has referred the following question of law to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the Income Tax Officer to make two separate

assessments on the firm in question for the period preceding and following the death of Shamandas ?

The material facts giving rise to this reference, briefly, are as follows : The assessee is a registered firm. One of the partners of the assessee-firm

died on October 30, 1976, and thereafter, a new partnership deed was executed on November 25, 1976. The assessee filed two separate returns

and contended before the Income Tax Officer that two assessments should be framed for the two separate periods. The Income Tax Officer,

however, made one assessment for both the periods. Aggrieved by that order, the assessee preferred an appeal before the Appellate Assistant

Commissioner which was dismissed Aggrieved by that order, the assessee preferred a further appeal before the Tribunal. The Tribunal held that

the assessing authority was not justified in framing a single assessment for the two separate periods. The Tribunal accordingly set aside the order

passed by the Appellate Assistant Commissioner and directed that two separate assessments be framed with regard to the two periods. Aggrieved

by this order, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court

for its opinion.

It was brought to our notice by learned counsel for the parties that a proviso has been inserted in section 187(2) of the Act by the Taxation Laws

(Amendment) Act, 1984, with retrospective effect from April 1, 1975. In Commissioner of Income Tax Vs. Kheta Sons and Co., , a Division

Bench of this court has held that after the insertion of the proviso in sub-section (2) of Section 187 of the Act by the Taxation Laws (Amendment)

Act, 1984, section 187 of the Act would not apply to cases where a firm is dissolved on the date of death of any of its partners, in the absence of

any contract to the contrary. Therefore, it must be held that the Tribunal was right in directing the Income Tax Officer to make two separate

assessments on the firm for the two periods.

Our answer to the question referred to this court is, therefore, in the affirmative and against the Revenue. In the circumstances of the case, parties

shall bear their own costs of this reference.