

(1985) 03 MP CK 0021

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 417 of 1981

CHHOTE LAL REWAPRASAD

APPELLANT

Vs

COMMISSIONER OF INCOME
TAX.

RESPONDENT

Date of Decision: March 31, 1985

Acts Referred:

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

Citation: (1986) 51 CTR 282

Hon'ble Judges: J. S. Verma, J

Bench: Division Bench

Judgement

J. S. Verma, J. - This reference under s. 256(1) of the IT Act is at the instance of the assessee, to answer the following questions of law, namely :

"1. Whether, on the material on record, there is justification in law to hold that by the death of one of the partners, there was only a change in the constitution of the firm ?

2. Whether, on the facts and in the circumstances of the case, only one assessment could be made for the entire accounting period or two assessments should have been made - one till the date of death of one of the partners and the other subsequent thereto ?"

2. The assessee is a registered firm, carrying on business in grains. The firm had four partners, out of whom one, namely Rewaprasad, died on 17-3-1973. For the asst. yr. 1974-75, accounting year ending on Diwali in the year 1973, the assessee filed two returns one for the period 5-11-1972 to 16-3-1973, and the other for the period 17-3-1973 to Diwali 1973, the date of death of Rewaprasad being the point of demarcation between the two periods. The assessee contended that the firm stood dissolved on the death of Rewaprasad on 17-3-1973, so that it was not a case of mere change in the constitution but one of succession governed by s. 188 of the Act

and not s. 187. The ITO rejected this contention on the ground that the original partnership deed dt. 21-4-1969 expressly provided that the firm shall continue and shall not be deemed to be dissolved in the event of death of any of the partners. Accordingly, the ITO held that it was a case of only change in the constitution of the firm governed by s. 187 of the Act. The CIT (Appeals) dismissed the assessee's appeal and affirmed the order of the ITO. The Tribunal has further affirmed this conclusion. Hence the reference of the above questions at the instance of the assessee for decision of this Court.

3. The aforesaid two questions, in substance involve only one point for decision. The point is whether on the facts and in the circumstances of the case, it is s. 187 and not s. 188 of the Act, which applies, or, in other words, has the Tribunal rightly held that it is a case of mere change in the constitution of the firm and not one of succession.

4. It may be stated at the outset that this reference has to be decided on the basis of s. 187 as it stood prior to the amendment w.e.f. 1-4-1975, by which a proviso was added to sub-s. (2) of s. 187, laying down that nothing contained in cl. (a) of sub-s. (2) of s. 187 shall apply to a case where the firm is dissolved on the death of any of its partners. The constitution made of s. 187, as it stood prior to this amendment is, therefore, governed by the decision of a Full Bench of this Court in [Girdharilal Nannelal and Sukhlal Jhamaklal Vs. Commissioner of Income Tax](#), which was a decision on the constitution of this provision prior to this amendment. It was held that in such a situation, there was merely a change in the constitution of the firm during the accounting year, to be governed by s. 187 and it was not a case of succession governed by s. 188 of the Act, and that the income earned by the firm before such change is to be clubbed with the income earned after such change and a single assessment is to be made in the firm for the entire accounting period. The questions referred in the present case have, therefore, to be answered accordingly, following the decision of the Full Bench.

5. Consequently, the reference is answered against the assessee and in favour of the revenue, as under :

(1) The Tribunal was justified in holding that on the death of one of the partners, there was only a change in the constitution of the firm; and

(2) Only one assessment was required to be made for the entire accounting year.

There will be no order as to costs.