

(1985) 07 MP CK 0017

Madhya Pradesh High Court

Case No: Miscellaneous Civil Caes No. 417 of 1981

Chhote Lal Rewaprasad

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: July 31, 1985

Acts Referred:

- Income Tax Act, 1961 - Section 187(2)
- Taxation Laws (Amendment) Act, 1984 - Section 187, 188

Citation: (1985) 156 ITR 565

Hon'ble Judges: K.K. Adhikari, J; J.S. Verma, J

Bench: Division Bench

Advocate: B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

J.S. Verma, J.

This reference u/s 256(1) of the Income Tax Act, 1961, 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 should 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 March 17, 1973. For the assessment year 1974-75, accounting year ending on Diwali in the year 1973, the assessee filed two returns--one for the period November 5, 1972, to March 16, 1973, and the other for the period March 17, 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 March 17, 1973, so that it was not a case of a mere change in the constitution but one of succession governed by Section 188 of the Act and not Section 187. The ITO rejected this contention on the ground that the original partnership deed dated April 21, 1969, expressly provided that the firm shall continue and shall not stand dissolved in the event of death of any one of the partners. Accordingly, the ITO held that it was a case of only a change in the constitution of the firm governed by Section 187 of the Act. The Commissioner (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 is at the instance of the assessee for the 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 Section 187, and not Section 188 of the Act, which applies, or, in other words, has the Tribunal rightly held that it is a case of a 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 Section 187 as it stood prior to the amendment with effect from April 1, 1975, by which a proviso was added to Sub-section (2) of Section 187, laying down that "nothing contained in Clause (a) of Sub-section (2) of Section 187 shall apply to a case where the firm is dissolved on the death of any of its partners". The construction made of Section 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 construction 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 Section 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 on 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.

6. There will be no order as to costs.