

**(2000) 01 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** Case Referred No. 22 of 1991 20 January 2000 A.Y. 1981-82

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

NATHMAL BANKATLAL PAREKH  
and CO.

RESPONDENT

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**Date of Decision:** Jan. 20, 2000

**Citation:** (2000) 159 CTR 350

**Hon'ble Judges:** T. Ch. Surya Rao, J; P. Venkatarama Reddi, J

**Bench:** Full Bench

**Advocate:** J V. Prasad, Y Ratnakar, for the Appellant;

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**Judgement**

P. Venkatarama Reddi, J.

The Tribunal, Hyderabad A Bench, has referred the following questions for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, and in the absence of a specific agreement in the instrument of partnership stating that the death of a partner would not dissolve the partnership the Tribunal was correct in law in inferring that an implied contract existed amongst the partners that the demise of any one of them would not dissolve the partnership ?

2. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that there was no dissolution of the partnership on 21-10-1980 was based on any evidence or material and was free from perversity"

2. The appeal before the Tribunal arises out of a reopened assessment u/s 147(b) for the year 1981-82 (period ending on 21-10-1980). The assessing authority made an addition of Rs. 62,508 by increasing the value of the closing stock of beedies on the footing that there was dissolution of the firm with the death of one of the partners. After the death of the partner, the minor son of the deceased partner was admitted to the benefits of partnership and a fresh partnership deed was executed on

8-11-1980. The reconstituted firm closed its accounts for the period from 21-10-1980, to 7-11-1980. Thus, two assessments were finalised i.e. one of the period ending 21-10-1980 and another for the period ending on 7-11-1980. On appeal, the Commissioner (Appeals) deleted the addition of 62,508 to the closing stock inasmuch as he came to the conclusion that there was no dissolution of the firm and the assessing authority should have made one assessment for the entire period from Diwali, 1979, to 7-11-1980, and therefore, the question of revaluation of closing stock as on 21-10-1980, could not arise. The department filed appeal against this order before the Tribunal. The Tribunal confirmed the order of the Commissioner (Appeals). The revenue's application for reference was allowed.

The Tribunal having noted the settled legal position that on dissolution of the firm, the valuation of the stock has to be made at the market price, proceeded to consider the crucial question whether in fact there was dissolution of the firm. The Tribunal also noted the indisputable proposition that the death of the partner has the effect of dissolving the firm unless there is contract to the contrary and that such contract may be express or implied, oral or in writing. The Tribunal observed at para 11 as under:

"We find sufficient force in the submissions made on behalf of the assessee before us. Death of a man uncontrollable as it is, did not cause any ripples in the present partnership. Everything went on quietly. The absence of the deceased partner was made good by admission of his minor son to the benefits of the partnership. The partnership thus remained intact. These circumstances, do drive us to infer that an implied contract existed amongst the partners that the demise of any one of them shall not dissolve the partnership. Dissolution was debated amongst them and reduced to writing in the form of paras. 11 and 12 of the deed reproduced above".

Earlier to that, the Tribunal referred to para. 11 of the partnership deed according to which the trade mark and goodwill of the firm shall be auctioned amongst the partners and allotted to the highest bidder on the termination of the partnership. This was not done despite the death of one of the partners which supports the inference that the partners did not intend to dissolve the firm

3. We are unable to say that the conclusion reached by the Tribunal suffers from any erroneous legal approach nor can it be said to be perverse. True, the Tribunal did not specifically consider the effect of the partners' themselves filing two returns for the same year on the footing that there was dissolution. It may be one of the relevant factors which will have bearing on the controversy, But it cannot be over-emphasised. Such conduct on the part of the partners could very well be attributed to their desire to play safe in a doubtful situation. It cannot have an overriding effect over the events that took place soon after the dissolution especially in the event of continuing the business by taking over the closing stock, etc. without interruption and even inducting the son of the erstwhile partner into the firm. At best, two views are possible. We cannot therefore, hold that the finding recorded by the Tribunal,

can be characterized as perverse. We, therefore, answer the questions in favour of the assessee and against the revenue. The reference case is accordingly, disposed of.