

Cit Vs. Dass Bros.

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Court : Allahabad

Decided On : Jan-03-2003

Reported in : [2003]130TAXMAN599(All)

Appeal No. : IT Ref. No. 199 of 1983 3 January 2003

Appellant : Cit

Respondent : Dass Bros.

Judgement :

ORDER

M. Katju, J.

Heard learned counsel for the parties.

2. This is an income-tax reference under section 256(1) of the Income Tax Act in which the following questions of law have been referred to us for our opinion :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that section 187(2) of the Income Tax Act, 1961 did not apply in the instant case and hence a single assessment could not be made on the income for the period 1-4-1979 to 31-3-1980 ?

2. Whether the Tribunal was justified in confirming the order of the Appellate Assistant Commissioner directing the Income Tax Officer to make two separate

assessments for the income of the periods 1-4-1979 to 30-6-1979 and 1-7-1979 to 31-3-1980 ?'

3. The assessee is a firm and the relevant assessment year is 1980-81. The firm was constituted under a deed of partnership dated 4-7-1977 in which there were two partners, viz., Ashok Kumar and Nirmala Dass. On 1-7-1979 a new deed was drawn up and one Mr. Pankaj Kumar Dass was taken in as another partner. Two returns were filed for the relevant assessment year, one for the period 1-4-1979 to 30-6-1979 and the other for the period 1-7-1979 to 31-3-1980. The Income Tax Officer, however, held that it was only change in the constitution of the firm and hence there will be a single assessment. In appeal, the Appellate Assistant Commissioner set aside the assessment order and directed two assessment orders and that order was upheld by the Tribunal.

4. Section 187(2) of the Income Tax Act, 1961 states :

'(2) For the purposes of this section, there is a change in the constitution of the firm

(a) if one or more of the partners cease to be partners or one or more new partners after admitted in such circumstances that one or more of the person who were partners of the firm before the change continue as partner or partners after the change; or

(b) where all the partners continue with a change in their respective shares or in shares of some of them :

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.'

From the above provision it is evident that even if one of the partners of the firm continues in the firm, it will be reconstitution and not dissolution of the firm. Thus, if there is a partnership firm in which there are three partners A, B and C and at some point of time partners B and C leave the firm and D and E become partners of the firm, yet it will be a case of reconstitution and not dissolution of the firm because A is continuing in the firm. Hence, in view of the provisions of section

187(2) of the aforesaid Act it is a case of reconstitution and not dissolution of the firm.

5. In the present case there is an addition of one more partner but two old partners continued. Hence, in view of the provisions of section 187(2) of the Act it is reconstitution of the firm and accordingly there has to be a single assessment in view of the decision in the case of Vishwanath Seth v. CIT (1994) 146 ITR 249.

6. Hence, we answer the questions referred to us in the negative, i.e., the favour of the department and against the assessee.

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