

**Cit Vs. A.D. Qureshi**

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**SooperKanoon Citation :** [sooperkanoon.com/492683](http://sooperkanoon.com/492683)

**Court :** Allahabad

**Decided On :** Dec-12-2002

**Reported in :** [2003]130TAXMAN612(All)

**Appeal No. :** IT Ref. No. 37 of 1982 12 December 2002

**Appellant :** Cit

**Respondent :** A.D. Qureshi

**Advocate for Pet/Ap. :** Bharat Ji Agrawal and A.N. Mahajan, *for the Applicant*

**Judgement :**

ORDER

Sri Bharat Ji Agrawal and Sri A.N. Mahajan appeared for the department. Assessee has been served notice but none has appeared.

2. This is an income-tax reference under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in pursuance of direction of the High Court. Following questions 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 law in holding that the income of the two periods could not be clubbed

2. Whether, on the facts and in the circumstances of the case, the department's view that there was only a change in the constitution of the first and that only one

single assessment was justified in view of the provisions of section 187(1) of the Income Tax Act, 1961 is correct in law ?'

3. The assessee is a firm and the relevant assessment year is 1976-77. The firm consisted of three partners and two minors were admitted to the benefits of partnership. After 17-12-1975 the both minors were dropped and five new partners were taken into the partnership. The question whether there was dissolution or mere reconstitution of the firm has to be answered in light of section 187 of the Act. It is as follows :

'Change in constitution of a firm-(1) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

(2) For the purpose 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 are admitted, in such circumstances that one or more of the persons 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 the share 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.'

4. It is not disputed that the three partners were common. The both minors who were admitted to the benefit of partnership were dropped and five new partners were taken into partnership in view of section 187(2)(a) of the Act this is a case of reconstitution of the firm and not of its dissolution. As such only one assessment has to be made for the assessment year. In view of this both the first question is answered in the negative and the second is answered in the affirmative that is both the questions are answered in favour of the department and against the assessee. The reference is answered accordingly.

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