

Commissioner of Income Tax, Coimbatore

Vs

Ayyanarappan and Co., Salem and Another

Tax Reference Case No. 12 of 1982

(J. S. Verma, S. P. Bharucha, Sujata V. Manohar JJ)

23.01.1996

ORDER

1. This is a reference made by the Income Tax Appellate Tribunal under Section 257 of the Income Tax Act, 1961, to answer the following question of law, namely :

"Whether on the facts and in the circumstances of the case, and having regard to the provisions of Section 187(2) of the Income Tax Act, the Appellate Tribunal is correct in law in holding that consequent to the death of partner Alagappan on 28-5-1976, two separate assessments and not one assessment should be made for the Assessment Year 1977-78 ?"

2. The two assessee firms consisted of five and six partners respectively. Shri T. Alagappan was one of the partners in each of the two firms. He died on 28-5-1976. The relevant assessment year is 1977-78 for the period ending on 31-3-1977. The two firms claimed that on 28-5-1976, they were dissolved on the death of the said partner and fresh partnerships were entered on 29-5-1976. The Income Tax Officer did not accept the claim of the assesseees and held that there was only a change in the constitution of the firms according to Section 187(2)(a) of the Act and not their dissolution. Accordingly, he clubbed the income of the old and new firms in respect of each of the two assesseees. The appeals of the assesseees were allowed by the Commissioner. The appeals by the Revenue to the Tribunal have been dismissed. At the instance of the Revenue, the Tribunal has made this reference in view of the conflicting decisions of different High Courts.

3. By the Taxation Law (Amendment) Act, 1984, amendment has been made retrospectively, w.e.f. 1-4-1975 in Section 187 whereby the following proviso has been added in sub-section (2) :

"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. In view of this retrospective amendment prior to the relevant Assessment year, Section 187 has to be read together with this proviso. By virtue of the said proviso, the applicability of clause (a) of sub-section (2) is excluded since the firms were dissolved on the death of one of its partners.

5. Accordingly, the question referred is answered in the affirmative against the Revenue and in favour of the assessee.

6. No costs.