

# CALCUTTA HIGH COURT

Mathurdas Govardhandas

Vs

Commissioner of Income Tax

(Dipak Kumar Sen, J.)

24.08.1979

## JUDGEMENT

**Dipak Kumar Sen, J.**

( 1. ) THE facts and the proceedings leading up to the present reference are as follows : Mathurdas Govardhandas, the assessee, is a partnership-firm which carries on business as general merchants and bankers and also as the managing agents of a company named Metal Distributor Ltd. up to April, 1965. THE assessee was constituted by a deed of partnership dated the 17th December, 1963, with three partners, namely, Govardhandas Binani, Ghanshyamdas Binani having 2/5ths share each and Sm. Padma Binani, the wife of Ghanshyamdas, having 1/5th share, respectively, in the said partnership. THE said deed did not provide for the continuation of the said partnership in the event of the death of any of the partners.

( 2. ) DURING the assessment year 1966-67, the relevant accounting period being the year ending on the 24th October, 1965, the said Govardhandas Binani died on the 19th April, 1965. On the 7th May, 1965, another deed of partnership was executed by the surviving partners, namely, Ghanshyamdas Binani and the said Padma Binani, recording, inter alia, as follows : (a) The partnership carried on under the earlier deed dated the 17th December, 1963, was a partnership at will and on the death of Govardhandas Binani the partnership stood dissolved. (b) The surviving partners had agreed to become partners and continue the business of the old firm to be commenced immediately after the dissolution of the same. (c) The name of the new partnership would be Mathurdas Govardhandas. (d) The new firm would take over all assets and liabilities of the old firm. (e) The shares of the said Ghanshyamdas Binani and Padma Binani in the assets and profits of the new firm would be 4/5ths and 1/5th, respectively. For the assessment year 1966-67, the assessee filed two returns of income, one being for the period between the 1st November, 1964, and the 19th April, 1965, i.e., up to the death of the said Govardhandas Binani and the other being for the period from the 28th April, 1965, up to the end of the accounting period, i.e., the 24th October, 1965, and claimed that separate assessments should be made for the said periods inasmuch as after the 19th April, 1965, an entirely new firm had come into

existence and had succeeded the old firm. The ITO held that inasmuch as both the partners in the new firm had been partners in the old firm, it was a case of change of constitution of a firm within the meaning of Section 182(2)(a) of the I.T. Act, 1961, and not one of succession under Section 188 of the said Act. Accordingly, he made one assessment for the assessment year. Being aggrieved, the assessee preferred an appeal to the AAC who found that after the death of the said partner no valuation or estimate of his share in the old firm had been made and that the accounts have been carried on in the same set of books till the end of the accounting period though separate profit and loss accounts were made out for the said two periods. He also noted that there was no gap between the date of the death of Govardhandas Binani and the date on which the new partnership came into existence and that Padma Binani was admittedly a common partner in both the firms. He held that the provisions of Section 187 of the Act were attracted in the facts and accordingly upheld the order of the ITO.

( 3. ) FROM the order of the AAC, the assessee preferred a further appeal to the Income-tax Appellate Tribunal. It was contended in, the said appeal by the assessee that as there was no provision in the deed of partnership dated the 17th December, 1963, that the partnership would continue in the case of death of any of the partners, the earlier partnership came to an end on the death of Govardhandas. There was no transaction in the account of the first partnership after the 19th April, 1965, and a new firm had come into existence by the 20th April, 1965. It was submitted that it was a case of succession and not that of a change in the constitution of the firm. Contentions to the contrary were made on behalf of the revenue. The Tribunal held that, as on the death of one of the these partners the remaining two partners had continued as partners, therefore, one assessment had to be made for the relevant year. The Tribunal upheld the decision of the AAC and dismissed the appeal. On an application of the assessee under Section 256(1) of the I.T. Act, 1961, the Tribunal has drawn up a statement of case and has referred the following question of law for the opinion of this court : "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the provisions of Section 187(2)(a) would be applicable and as such only one assessment for the whole year was rightly made ? " ;