

PUNJAB AND HARYANA HIGH COURT

Nand Lal Sohan Lal

Vs

The Commissioner of Income-Tax

Income Tax Reference No. 20 of 1972

(O. Chinnappa Reddy, S.S. Sandhawalia, Bhopinder Singh Dhillon, M.R. Sharma and Harbans Lal, JJ.)

24.05.1977

REFERRING ORDER

D.K. Mahajan, J.

1. The Income-tax Appellate Tribunal, Chandigarh Bench, has referred the following question of law for our opinion :-

"Whether on the facts and in the circumstances of the case, one assessment for both the periods was justified in, view of the provisions of Section 187(2) of the Income-tax Act, 1961 ?"

2. It is no doubt true that a similar question came up for consideration in *M/s Dharam Pal Sat Dev, Jullundur v. The Commissioner of Income Tax, Punjab, J. & K. and Chandigarh, Patiala*¹, and was answered in the affirmative, i.e., in favour of the Revenue, by P.C. Pandit and B.S. Dhillon, JJ. A contrary view had been taken in *Bhausia Ganusa Pawar and Co. v. Commissioner of Income Tax, Poona*², and this decision was not noticed by the learned Judges in Dharam Pal Sat Dev's case. Moreover, certain assumptions have been made regarding the non-application of the provisions of the Partnership Act to the cases arising under the Income-tax Act to which we do not subscribe. Thus, in our view Dharam Pal Sat Dev's case needs reconsideration. The matter is of considerable importance. A number of Division Bench decisions and some decisions of the Supreme Court have to be considered and, therefore, it would be advisable that this reference is heard by a larger Bench, at least of five Judges.

3. The assessment year in question is 1968-69. The original constitution of the assessee firm was under a deed of partnership executed on 16th May, 1964, and is as follows :-

"1.	Shri Nand Lal	...	7/40
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2.	Shri Sohan Lal	...	7/40
3.	Shri Har Dyal	...	7/40
4.	Shri Harbans Lal	...	7/40
5.	Shri Ram Lal	...	5/40
6.	Shri Mukand Lal	...	7/40

On 20th October, 1967, one of the partners, namely, Shri Mukand Lal, died. After his death a new partnership deed was executed on 26th October, 1967 and Shri Rajinder Kumar, his minor son, was admitted to the benefits of the partnership. The assessee filed two returns, one for the period from 13th April, 1967 to 20th October, 1967, and the other for the period from 21st October, 1967 to 12th April, 1968. The Income-tax Officer placing reliance on Section 187(2) of the Income-tax Act, 1961 (hereinafter referred to as the Act), made one single assessment for both the periods. The reason for this was that in the view of the Income-tax Officer, the case was of change in the constitution of the firm within the meaning of Section 187(2) of the Act. The assessee appealed to the Appellate Assistant Commissioner but with no success. The assessee then went up in further appeal to the Income-tax Appellate Tribunal and urged that this was a case of succession and fell within the meaning of Section 189 of the Act, and the provisions of Section 187(2) were not applicable. The principal contention of the assessee was that on the death of Mukand Lal, the firm which came into being on the 20th October, 1967. Under the partnership deed dated 26th October 1967, was a new firm. The old firm had dissolved on the death of Mukand Lal..... The contention of the assessee did not prevail with the Tribunal and it affirmed the decision of the Appellate Assistant Commissioner. The reasons which prevailed with the Tribunal may now be stated in their own words :-

"It was urged that the assessee's case was not covered by Section 187(2) of the Income-tax Act, 1961, and the case should have been governed by the provisions of the Indian Partnership Act. On an earlier occasion, we had to deal with this matter in ITA No. 3691 of 1969-70 when we held as under :-

There are two questions involved viz.,

- (1) What is the true effect of Section 187(2) ?
- (2) Can it be said in general law that there was a dissolution and the two partnerships were different ?

Section 187(2) reads as follows :-

* * * * *

This is an 'explanation' section, i.e., it explains what is the meaning of phrase 'change in constitution' of a firm. It is a well-settled principle of interpretation that a defining Section or an

explanation Section has to be strictly construed and the meaning as defined or as explained will hold good for purposes of the Act in which the explanation occurs. The assessee may or may not be right in claiming that in civil law it should be deemed that a partnership is dissolved on the death of the partner. Whatever be the position in other laws (laws other than Income-tax Act), the explanation given in the Income-tax Act must be adopted as authoritative, mandatory and final, so far as the application of the Income-tax Act is concerned. We, therefore, have no hesitation in coming to the conclusion that the assessee must fail and it must be held that there was a change in the constitution of the firm within the meaning of Section 187(2) referred to above.

Even in spite of the very persuasive arguments of the learned counsel for the assessee, he failed to dislodge, us from our view expressed above and, therefore, we hold that in the instant case, the Income-tax Officer was right in making a single assessment because of Section 187(2) of the Income-tax Act. The assessee fails on this issue."

4. The assessee then moved the Tribunal under Section 256(1) of the Act for a reference of the question of law already set out in the opening part of this order for opinion of this Court, and that is how the matter has been placed before us.

5. Before we proceed to deal with the matter, it will be advisable to refer to certain provisions of the Indian Income-tax Act, 1922, and thereafter to the provisions of the 1961 Act. For facility of reference these provisions are placed side by side :

1922 - Act	1961 - Act
2. In this Act, unless there is any thing repugnant in the subject or context, -	In this Act, unless the context otherwise requires,
(6B) 'firm', 'Partner' and 'Partnership' have the same meanings respectively as in the Indian Partnership Act, 1932 (IX of 1932), provided that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership;	(23) 'firm', 'partner' and 'partnership' have the meanings respectively assigned to them in the Indian Partnership Act, 1932, but the expression 'partner' shall also include any person who being a minor, has been admitted to the benefits of partnership".
1922 Act	1961 Act
3. Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that charged for that year in accordance	4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those

<p>with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family company and local authority and of every firm and other association of persons or the partners of the firm or members of the association individually.</p>	<p>rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year or previous years, as the case may be, of every person :</p>
<p>Provided that where by virtue of any provisions of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.</p>	
	<p>2(31) 'person' includes - (i) an individual, (ii) a Hindu undivided family, (iii) a company, (IV) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority; and (vii) every artificial, juridical person, not falling within any of the preceding sub-clauses;</p>
<p>1922 Act</p>	<p>1961 Act</p>
<p>25. (1) Where any business, profession or vocation to which sub-section (3) is not applicable, is discontinued in any years, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of</p>	<p>176. (1) Notwithstanding anything contained in Section 4, where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinuance, may, at the discretion of the Income-tax Officer be charged to tax in that assessment</p>

the previous year.	year.
	(2) * *
(2) * *	(3) * *
(3) * *	(4) * *
	(5) * *
(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918 (VII of 1918), is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period.	
(6) The tax chargeable under this Section shall be in addition to the tax, if any, chargeable under any other provision of this Act.	
1922 Act	1961 Act
between the end of the previous year and the date of such succession, and such person may further claim that the income, profits, and gains of the previous year shall be deemed to have	

<p>been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period and, if any amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference;</p>	
<p>26. (1) Where, at the time of making an assessment under Section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment.</p>	<p>187. (11) 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 :</p>
<p>Provided that the income-profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same.</p>	<p>Provided that - (i) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners, who, in such previous year were entitled to receive the same; and</p>
<p>1922 Act</p>	<p>1961 Act</p>
<p>Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm from constituted at the time of making the assessment.</p>	<p>(ii) when the tax assessed upon a partner cannot be recovered from him it shall be recovered at the firm as constituted at the time of making the assessment.</p>
<p>(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by</p>	<p>(2) For the purposes of this Section there is a change in the constitution of the firm :-</p>

<p>another person, such person and such other person shall, subject to the provisions of sub-section (4) of Section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year :</p>	
	<p>(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; and (b) where all the partners continue with a change in their respective shares or in the shares of some of them.</p>
<p>Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.</p>	<p>188. Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by Section 187, separate assessment shall be made on the predecessor firm and the successor firm in accordance with the provisions of Section 170.</p>
<p>1922 Act</p>	<p>1961 Act</p>

<p>44. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax (sic) of Chapter IV shall, so far as may be, apply to any such assessment.</p>	<p>177. (1) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the Income-tax officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.</p>
	<p>(2) without prejudice to the generality of the foregoing subsection, if the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceeding under this Act in respect of any such association of persons as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts, specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.</p>
<p>1922 Act</p>	<p>1961 Act</p>
	<p>(3) every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so</p>

	far as may be shall apply to any such assessment or imposition of penalty or sum.
	(4) where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons, referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.
1922 Act	1961 Act
	(5) Nothing in this Section shall affect the provisions of sub-section (6) of Section 159.
	(5) 189(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Income-tax Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provisions of this Act, shall apply, so far as may be, to such assessment.
	(2) Without prejudice to the generality of the foregoing sub-section, if the Income-tax Officer or the Appellate Assistant

	<p>Commissioner in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.</p>
1922 Act	1961 Act
	<p>(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.</p>
	<p>(4) Where such discontinuance of dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall so far as may be, apply accordingly.</p>
	<p>(5) Nothing in this Section shall affect the provisions of sub-section (6) of Section 159".</p>

6. The question that requires determination is, as to whether on the death of a partner, the firm is dissolved, and the case is covered by Section 189, or by Section 188, where its place has been taken by a new firm, or it is merely a case of change in constitution of the firm. In taking the view that on the death of a partner, there is no dissolution of a firm, but it is merely a change in the constitution of a firm, the learned Judges in Dharampal Sat Dev's case proceeded on the basis of the concession made by the learned counsel for the assessee that "where the provisions of Income-Tax Act are clear, no other enactment has to be taken into consideration while considering the liability of the assessee." On the basis of this concession, the learned Judges observed :-

"In this view of the matter, the provisions of the Partnership Act can only be referred to if it is found that a particular situation is not covered by the provisions of the Income-Tax Act. Though a particular firm in view of the provisions of Section 42(c) of the Indian Partnership Act, may stand dissolved, but if we come to the conclusion that such a case is covered by the provisions of Section 187 of the Act, the assessee cannot get the benefit of the said dissolution of the firm for the purposes of the Income-Tax Act."

We are, however, unable to agree with this line of approach. In the first place, there is no provision in the Income-tax Act as to what happens to a firm whose partner dies. Necessarily, therefore, reference has to be made to the Partnership Act. In this connection we would like to refer to the decisions of the Supreme Court in *Dulichand Laxminarayan v. Commissioner of Income-tax, Nagpur*³, Das, C.J., who spoke for the Court, observed :-

"Section 26-A of the Act quoted above postulates the existence of a firm, for otherwise no question of its registration can possibly arise. The Act, however, does not indicate what a firm signifies or how it is to be constituted. Indeed Section 2(6B) of the Act clearly provides, *inter alia*, that "firm" and "partnership" have the same meanings respectively as they have in the Indian Partnership Act, 1932. We have, therefore, to go to the last mentioned Act to ascertain what a firm is and how it can be created.

Turning, then, to the Indian Partnership Act, 1932, we come to Section 4 which defines "partnership", "partner", "firm" and "firm name" in the words following :-

4. Definition of "partnership", "partner", "firm" and "firm name". "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

This Section clearly requires the presence of three elements, namely, (1) that there must be an agreement entered into by two or more persons; (2) that the agreement must be to share the profits of a business; and (3) that the business must be carried on by all or any of those persons acting for all. According to this definition "persons" who have entered into partnership with one

another are collectively called a "firm" and the name under which their business is carried on is called the "firm name". The first question that arises is as to whether a firm as such can enter into an agreement with another firm or individual. The answer to the question would depend on whether a firm can be called a "person".

There is no definition of the word "person" in the Partnership Act. The General Clauses Act, 1897, however, by Section 3(42) provides that "person shall include any company or association or body of individuals whether incorporated or not." The firm is not a company but is certainly an association or body of individuals. The argument is that applying that definition to the word "persons" occurring in Section 4, one can at once say that an unincorporated association or body of persons, like a firm, can enter into a partnership just as by the application of that definition to Section 4 of the Indian Partnership Act a company can become a partner in a firm. The definitions given in Section 3 of the General Clauses Act, 1897, however, apply when there is nothing repugnant in the subject context. It is difficult to say that there is anything repugnant in the context of Section 4 itself which will exclude the application of that definition to the word "persons" occurring in Section 4. Is there, however, anything repugnant in the subject of partnership law, which will exclude the application of that definition to Section 4 ?

As pointed out in Lindley on Partnership, 11th Edition at page 153, merchants and lawyers have different notions regarding the nature of a firm. Commercialmen and accountants are apt to look upon a firm in the light in which lawyers look upon a corporation, i.e., as a body distinct from the members composing it. In other words merchants are used to regard a firm, for purposes of business, as having a separate and independent existence apart from its partners. In some systems of law this separate personality of a firm apart from its members, has received full and formal recognition, as, for instance, in Scotland. That is, however, not the English common law conception of a firm. English lawyers do not recognise a firm as an entity distinct from the members composing it. Our partnership law is based on English law and we have also adopted the notions of English lawyers as regards a partnership firm.

Some of the mercantile usages relating to a firm have, however, found their way into the law of partnership. Thus in keeping accounts, merchants habitually show a firm as a debtor to each partner for what he brings into the common stock and each partner is shown as a debtor to the firm for all that he takes out of that stock. But under the English common law, a firm, not being a legal entity, could not sue or be sued in the firm name or sue or be sued by its own partner, for one cannot sue oneself. Later this rigid law of procedure, way to considerations of commercial convenience and permitted a firm to sue or be sued in the firm name, as if it were a corporate body (see the Civil Procedure Code, Order 30, corresponding to Rules of the English Supreme Court, Order 40 VIII-A). The law of procedure has gone to the length of allowing a firm to sue or be sued by another firm having some common partners or even to sue or be sued by one or more of its own partners (see Order 30, rule 9, of the Civil Procedure Code), as if the firm is an entity distinct from its partners. Again, in taking partnership accounts and in administering partnership assets, the law has, to some extent, adopted the mercantile view and the liabilities of the firm are regarded as the liabilities of the partners only in case they cannot be met and discharged by the firm out of its assets. The creditors of the firm are, in the first place, paid out of the partnership assets and if there is any surplus then the share of each partner in such surplus is applied in payment of his separate debts, if any, or paid to him. Conversely, separate property of a partner is applied first in the payment of his separate debts and the surplus, if any, is utilised in meeting the

debts of the firm (see Section 49 of the Indian Partnership Act, 1932). In the Indian Income-tax Act itself a firm is, by Section 3, which is the charging section, made a unit of assessment. It is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid notions and extended a limited personality to a firm. Nevertheless, the general concept of partnership, firmly established in both systems of law, still is that a firm is not an entity or "person" in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. According to the principles of English jurisprudence, which we have adopted, for the purposes of determining legal rights "there is no such thing as a firm known to the law" as was said by James, L. J., in *Ex parte Corbett : In re Shand*, 1880 LRI 14 Ch. 122, 126. In these circumstances to import the definition of the word "persons" occurring in Section 3(42) of the General Clauses Act 1897, into Section 4 of the Indian Partnership Act will, according to lawyers, English or Indian, be totally repugnant to the subject of partnership law as they know and understand it to be. It is in this view of the matter that it has been consistently held in this country that a firm as such is not entitled to enter into partnership with another firm or individuals. It is not necessary to refer in detail to those decisions many of which will be found cited in *Jabalpur Ice Manufacturing Association v. Commissioner of Income-tax, Madaya Pradesh*⁴, to which a reference has already been made. We need only refer to the case of *Bhagwanji Morarji Goculdas v. Alembic Chemical Works Co. Ltd and others*⁵, where it has been laid down by the Privy Council that Indian law has not given legal personality to a firm apart from the partners. This view finds support from and is implicit in the observations made by this Court in *Commissioner of Income-tax, West Bengal v. A.W. Boggies and Co. and others*⁶,

7. Thus for the observation "the Act, however, does not indicate what a firm signifies or how it is to be constituted" in *Dulichand Laxminarayan's* case, if we, add or substitute for it the expression "how it can be dissolved", it will make no difference to the ratio of the decision. Reference has necessarily to be made to the provisions of the Partnership Act. No such concession has been made in our case, and on principle also, we do not see how the provisions of the Partnership Act to be ignored while dealing with the various legal consequences flowing therefrom in the matter of the constitution, dissolution and other matters pertaining to a firm. This view can only be subject to one exception, namely, that the provisions of the Partnership Act will give place to any matter specifically provided for in the Income-tax Act, which either in its context or otherwise, expressly or by necessary implication, is contrary to the provisions of the Partnership Act. In that event, the provisions of the Partnership Act must yield to the provisions of the Income-tax Act. In all other situations, the provisions of the Partnership Act will have to be looked into to determine the different consequences that may result in the happening of an event as between the partners.

8. Having cleared this ground, we now proceed to deal with the further observation of the learned Judges, namely :-

"In the present case, only one partner, namely Ram Rattan ceased to be a member of the firm on account of his death and his son Sham Lal was entered as a new partner in his place. The other two partners, namely, Sat Dev and Dharam Pal, remained the same. Therefore, the two partners, remaining the same and there being only a change in one

partner, as one partner ceasing to be a partner on account of his death and another partner entering into partnership, this answers the description of sub-section (2) of Section 187 of the Act and it has been rightly held by the authorities below that this constituted a change in the Constitution of the firm."

Those observations, in our opinion, do not lay down the correct proposition of law, keeping in view the scheme of the Income-tax Act. Sections 187 to 189 are in Chapter XVI headed, "Special provisions applicable to firm". Part A of this Chapter deals with assessment of firms, Part B with its registration and Part C deals with changes in constitution, succession and dissolution. This part thus deals with three situations, namely change, succession and dissolution of a firm, change in constitution of a firm implies that the firm which Income-tax Act treats as a taxable entity has not ceased to exist and only one or more of its partners have ceased to be its partners or some new partners have been added to it. Succession implies that the business of the firm has passed over to another firm, and the case is not one of change in the constitution of the firm, implying thereby that by mere change in the constitution of the firm a case of succession does not arise. Succession would mean passing over of the business of the firm from one entity to another. And the third case is that of dissolution of a firm, and this case is covered by Section 189. It can be that in case of dissolution of a firm there can be succession of the dissolved firm by another firm, and the case may fall under Section 188 as well as under Section 189. If the Legislature was contemplating dissolution as merely change in the constitution of a firm, it would have said so in Section 187, particularly when Part C of Chapter XVI dealt with, as already said, the changes in constitution, succession and dissolution of firms. Therefore, we cannot interpret the word 'cease' in Section 187(2)(a) as meaning 'cease by reason of death', because 'cease by death' results in a totally different result, namely, dissolution. It would be, different matter if the partnership deed provided that death of partner will not cause dissolution of the firm. In that event, Section 187(2) will cover the case of the death of a partner because on his death there is merely a change in the constitution of the firm and not its dissolution. Thus, the observations made in *Dharam Pal Sat Dev's case*, already quoted above, cannot be said to lay down a correct proposition of law. The conclusion which the learned Judges drew from the observations quoted above, was sought to be supported by the decisions of the Supreme Court in *Shivran Podder v. Income-tax Officer, Central II, Calcutta*⁷, and *Commissioner of Income-tax Bihar and Orissa, v. Kirkend Coal Co.*⁸, It would be pertinent to note that these decisions dealt with Section 44 of the 1922 Act, and if the peculiar phraseology of that Section before it was amended, is kept in view, it would be obvious that these decisions are no authority for the proposition for which they have been relied upon.

9. The following passage from the decision of the Supreme Court in *Poddar's case* (supra) illustrates that it has no relevance while interpreting Section 187 :-

"Section 44 operates in two clauses of cases, where there is discontinuance of business, profession or vocation, carried on by a firm or association, and where there is dissolution of an association. It follows that mere dissolution of a firm without discontinuance of the

business will not attract the application of Section 44 of the Act.... The reason for this distinction appears from the scheme of the Income-tax Act in its relation to assessment of the income of a firm. A firm whether registered or unregistered is recognised under the Act as a unit of assessment (Sections 3 and 2(2) and its income is computed under clauses (3) and (4) of Section 23 as the income of any other unit. Section 25(1) relates to assessment in case of a discontinued business - whether the business is carried on by a firm or by any other person. Then there is the special provision relating to assessment when at the time of making an assessment it is found that a change has occurred in the constitution of a firm, or a firm has been newly constituted : Section 26(1). The date on which the change has occurred is immaterial, it may be in the year of account, in the year of assessment or even after the close of the year of assessment. The Income-tax Officer has under Section 26(1) to assess the firm as constituted at the time of making the assessment, but the income, profits and gains of the previous year have, for the purpose of inclusion in the total income of the partners, to be apportioned between the partners who were entitled to receive the same. Sub-section (2) of Section 26 relates to assessment in the case of succession to a person (which expression includes a firm) carrying on a business by another person in such capacity.

Discontinuance of business has the same connotation in Section 44 as it has in Section 25 of the Act, it does not cover mere change in ownership or in the constitution of the unit of assessment. Section 44 is, therefore, attracted only when the business of a firm is discontinued, i.e., when there is complete cessation of the business and not when there is a change in the ownership of the firm, or in its constitution, because by re-constitution of the firm, no change is brought about in the personality of the firm, and succession to the business and not discontinuance of the business results. But the Income-tax Act recognises a firm for purposes of assessment as a unit independent of the partners constituting it, it invests the firm with a personality which survives re-constitution. A firm discontinuing its business may be assessed in the manner provided by Section 25(1) in the year of account in which it discontinues its business; it may also be assessed in the year of assessment. In either case it is the assessment of the income of the firm. Where the firm is dissolved, but the business is not discontinued, there being change in the constitution of the firm, assessment has to be made under Section 26(1), and if there be succession to the business, assessment has to be made under Section 26(2). The provisions relating to assessment on reconstituted or newly constituted firms, and on succession to the business are obligatory. Therefore, even when there is change in the ownership of the business carried on by a firm on re-constitution or because of a new constitution, assessment must still be made upon the firm. When there is succession, the successor and the person succeeded have to be assessed each in respect of his actual share. This scheme of assessment furnishes the reason for omitting reference to dissolution of a firm from Section 44 when such dissolution is not accompanied by discontinuance of the business".

Relying on the aforesaid passage, in Kirkend Coal's case, it was observed :-

"Section 44, therefore, only applied to those cases in which there had been discontinuance of the business and not to cases in which the business continued after re-constitution of the firm, or there was succession to the business. Cases of re-constitution of the firm or succession to the business of the firm are covered by Sections 26(1) and (2)."

10. In *Hoshiarpur Electric Supply Co. v. Commissioner of Income Tax, Patiala*,⁹ the question was totally different, and the provision with which we are concerned never fell for consideration. The question was whether there was a transfer of business, and it was held that there was no transfer of business. The decision in *R.S.B. Jessa Ram Fateh Chand v. Commissioner of Income Tax, U.P*¹⁰, , in our opinion, does not lay down the law correctly. Of course, this decision does support the view that the learned Judges took in Dharam Pal Sat Dev's case. We are, therefore, of the view that the decision in Dharam Pat Sat Dev's case does not lay down the correct law and needs reconsideration, and that is why we have recommended that this is a matter which should be decided rather authoritatively. We, therefore, direct that the papers of this case be laid before, the learned Chief Justice for constituting a Bench, at least of five Judges. We further direct that this matter be heard and decided at an early date.

Pritam Singh Pattar, J.

12. I agree.

FULL BENCH ORDER

M.R. Sharma, J.

11. A copy of the partnership deed dated May 16, 1964, Annexure 'A' shows that the assessee-firm had the following partners with their respective shares denoted against their names :-

Nandlal party of first part	...	7/40
Sohanlal party of second part	...	7/40
Mukandlal party of third part	...	7/40
Hardial party of fourth part	...	7/40
Ramlal party of fifth part	...	5/40
Harbanslal party of sixth part	...	7/40

On October 20, 1967, Shri Mukand Lal - one of the partners-died. A new partnership deed dated October 26, 1967, was executed whereby Rajinder Kumar, the minor son of the deceased partner Shri Mukand Lal, was admitted to the benefits of the partnership with effect from October 21,

1967. The assessee-firm filed two returns for the period April 18, 1967 to October 20, 1967 and October 21, 1967 to April 12, 1968. In the new partnership deed it has been specifically provided that the death of any of the partners shall not dissolve the partnership and either the legal heir or the nominee of the deceased partner shall take his place. However, there was no such stipulation in the original partnership deed.

12. The Income Tax Officer relying upon Section 187(2) of the Income Tax Act, 1961 (hereinafter called the Act), made one, single assessment for both the periods as he was of the view that the case was one of change in the constitution of the firm in contradistinction with succession thereto, which is covered by Section 188 of the Act. The appeals filed by the assessee-firm were dismissed by the learned Appellate Assistant Commissioner and the Income Tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as the Tribunal).

13. Before the learned Tribunal, it was urged on behalf of the assessee-firm that Section 187 of the Act did not apply in the case of a dissolved firm and this provision applied only where the firm continued to exist. It was also submitted that the dissolution and reconstitution of the firm are two different and distinct legal concepts. Since the original partnership deed did not make any express stipulation that the death of any of the partners shall not dissolve the partnership, the latter remained dissolved by operation of law and was succeeded by a new firm which was retrospectively brought into existence with effect from October 21, 1967 vide partnership deed dated October 26, 1967. These contentions were repelled by the learned Tribunal and at the instance of the assessee-firm it has referred the following question of law to this Court for its opinion :-

"Whether on the facts and in the circumstances of the case, one assessment for both the periods was justified in view of the provisions of Section 187(2) of the Income Tax Act, 1961 ?"

14. The Reference came up before Mahajan, J., (as the learned Chief Justice then was) and Pattar, J., Before the Bench it was contended on behalf of the Revenue that the matter was concluded against the assessee-firm by a Division Bench judgment of this court in *M/s Dharam Pal Sat Dev, Jullundur v. The Commissioner of Income Tax, Punjab, J. & K. and Chandigarh, Patiala*¹², The Bench noticed that the view taken by the Bombay High Court in *Bhausu Ganusa Pawar and Co. v. Commissioner of Income Tax, Poona*, (supra) was not brought to the notice of the Division Bench which decided *M/s Dharam Pal Sat Dev's* case (supra) and observed that in the latter case certain assumption had been made regarding the non-application of the provisions of the Indian Partnership Act to the cases arising under the Income Tax Act to which the Bench did not subscribe. It was of the view that the latter case needed reconsideration. Since the matter was considered to be of importance and a number of Division Bench judgments of various High Courts and the judgments of the Supreme Court had to be considered, it was recommended that the case should be decided by a Bench of five Judges. Under orders of Hon'ble the Chief Justice this case has accordingly been placed before this Full Bench for its decision.

15. At the very outset, it becomes necessary to examine the provisions of the Indian Partnership Act, 1932 (hereinafter called the Act). Section 4 of this Act defines 'partnership' as "the relation

between persons who have agreed to share the profits of a business carried on by all or any of them acting for all" The persons who enter into partnership with one another are individually called "partners" and collectively "a firm". Section 31 of this Act lays down that subject to contract between the partners and to the provisions of Section 30, which relates to minors being admitted to the benefits of a partnership, no person shall be introduced as a partner into a firm without the consent of all the existing partners. It also lays down that a partner admitted into a firm does not thereby become liable for any act of the firm before he became a partner. Section 32 of this Act provides for the circumstances in which a partner may retire from a firm. Section 37 of this Act lays down that where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement, of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm. Section 41 of this Act lays down that a firm is dissolved by the adjudication of all the partners or of all the partners but one as insolvent, or by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. This provision makes it clear that in any of the aforementioned contingencies, the firm shall stand compulsorily dissolved. Section 42 provides that a firm may stand dissolved on the happening of certain contingencies and reads :-

- (a) if constituted for a fixed term by the expiry of that term;
- (b) if constituted to carry out one or, more, adventures or undertakings by the completion thereof;
- (c) by the death of a partner; and
- (d) by the adjudication of a partner as an insolvent.

Section 44 of this Act lays down that at the suit of a partner, the Court may dissolve a firm on any of the grounds mentioned therein.

16. A perusal of the aforementioned provisions shows that a partnership has not been invested with the status of a person under this Act and indeed it was so held by the Supreme Court in *Dulichand Laxminarayan v. Commissioner of Income Tax, Nagpur*¹², Speaking for the Court, S. R. Das, C.J., observed as under :-

"It is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid notions and extended a limited personality to a firm. Nevertheless, the general concept of partnership, firmly established in both systems of law, still is that a firm is not an entity or 'person' in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership."

The law recognises a clear distinction between the continuity of the business and the personnel of the firm who carry it out. But for the limited purpose of Section 37, as firm stands dissolved on the death of a partner. If the business is continued by the remaining partners a new partnership comes into being. The same thing happens when a new person is introduced as a partner into a firm or one of the partners is allowed to retire. In all these cases a new association of individuals and a firm name comes into existence which does not have its identity as a person under the law incorporated in the Indian Partnership Act.

17. This peculiar situation available under the Indian Partnership Act led to evasion of tax under the various taxing statutes for, under most of these statutes the liability to pay tax accrues against a definite person or an association of individuals during a particular year of assessment. If a person died, his liability came to an end and similarly if the character of the association changed the liability of the earlier association came to an end. The Legislature being aware of these subtle legal distinctions has been devising various ways and means for protecting the interests of the Revenue in the matter of collecting taxes. In some cases special fictions are created for more effectively carrying out the objects of the Act. For instance, under Section 44 of the Indian Income Tax Act (No. 11 of 1922) it was expressly provided that notwithstanding its dissolution liability of a firm for payment of tax would continue to exist. This provision came up for consideration by the Supreme Court in *C.A. Abraham v. Income Tax Officer, Kottayam, and another*¹³. It was held that this Section set up machinery for assessing the tax liability of the firms which have discontinued their business and provides for three consequences -

"(1) that on the discontinuance of the business of a firm, every person who was at the time of its discontinuance a partner is liable in respect of income, profits and gains of the firm to be jointly and severally;

(2) each partner is liable to pay the amount of tax payable by the firm; and

(3) that the provisions of Chapter IV, so far as may be, apply to such assessment."

In other words this special provision made in the Income Tax Act which ran contrary to the Indian Partnership Act was held to govern the field. The Court observed -

"In effect, the Legislature has enacted by Section 44 that the assessment proceedings may be commenced and continued against a firm of which business is discontinued as if discontinuance has not taken place. It is enacted manifestly with a view to ensure continuity in the application of the machinery provided for assessment and imposition of tax liability notwithstanding discontinuance of the business of firms. By a fiction, the firm is deemed to continue after discontinuance for the purpose of assessment under Chapter IV."

Similarly, in *Commissioner of Income Tax, Madras, and another v. S.V. Anqidi Chettiar*¹⁴, it was held that if a registered firm is exposed to liability of paying penalty, by committing any of the defaults contemplated by clause (a), (b) or (c) of Section 28, by virtue of Section 44, notwithstanding the dissolution of the firm the assessment proceedings are liable to be continued

against the registered firm as if it has not been dissolved. The fact that under Section 23(5) of the Income Tax Act, in the case of a registered firm tax is not payable by the firm itself, does not prevent a penalty being imposed on the firm.

18. In a case under the East Punjab General Sales Tax Act, the Financial Commissioner, Punjab, had referred the following question to this Court for its decision :-

"Whether a partnership firm, which is a registered firm under the provisions of the Punjab General Sales Tax Act and which was in existence throughout the period for which assessment of sales tax has to be made, ceased to be liable to the said assessment by the mere fact that it has dissolved before the proceedings for assessment are initiated."

19. A Full Bench of this Court answered the question in the affirmative on the ground that a firm was a separate assessable entity under the Punjab General Sales Tax Act and there was no machinery provided therein for assessing a firm after its dissolution in respect of its turnover of business before the said dissolution. The State of Punjab went in appeal and the view taken by a Full Bench of this Court was affirmed by the Supreme Court of India. The decision is reported as *The State of Punjab v. Jullundur Vegetables Syndicate*¹⁵ The Court noticed the aforementioned two decisions and observed as under :-

"Strong reliance was placed upon two judgments of this Court. This Court in *C.A. Abraham v. Income Tax Officer, Kottayam* (supra), speaking through Shah, J., held that Section 44 of the Income Tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again in *Commissioner of Income Tax, Madras v. S.V. Angidi Chettiar* (supra). These two decisions are of no help to the Revenue in the present case. Indeed, in a sense they are against it. The Income Tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act, on dissolved firms."

20. A perusal of the aforementioned authorities shows that where a special provision was made in a taxing statute in derogation of the provisions of the Indian Partnership Act, the effect was given to it and where no such provision had been made decision regarding liability for payment of tax was made while taking into consideration the general provisions of the Indian Partnership Act. It is, therefore obvious that where the provisions of the Indian Income Tax are clear, resort cannot be had to the provisions of another statute like the Indian Partnership Act. This view taken by the Division Bench of this Court in *M/s Dharam Pal Sat Dev's case* (supra), even though based on a concession, represents the correct statement of law on the subject.

21. It is now to be seen whether the provisions contained in the Act have covered the situation in hand or not. For that purpose some of the provisions of the Act have to be examined. Section 2(31) of the Act defines a "person" to include (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person not falling

within any of the preceding sub-clauses. Apparently, the notion available under the Indian Partnership Act about a partnership being an association of individuals and a firm being a collective name of those individuals who constitute the firm has been modified and a firm has been equated with a person having a separate entity. It is reasonable to infer that a firm for the purpose of the Income Tax Act, has a separate personality and existence independent of the partners who constitute it and is taxable as a unit. Section 170 provides for framing assessment in cases of succession to business otherwise than on death. Assessment of the firms registered under the Act is provided for in Section 182 of the Act and assessment of unregistered firms is provided for in Section 183 of the Act. The changes in the constitution, succession and the dissolution of the firms are provided for in Sections 187, 188 and 189 of the Act. Of these sections, the first two are directly in point and deserve to be noticed *in extenso* :

"Section 187 :

(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 :

Provided that -

(i) the income of the previous year shall for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same; and

(ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making assessment.

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

(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 shares of some of them.

Section 188 :

Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by Section 187, separate assessment shall be made on the predecessor firm and the successor firm in accordance with the provisions of Section 170."

22. The purport of Section 187(1) is that assessment on the firm which undergoes change in its constitution has to be made as it stands reconstituted at the time of the making of assessment, provided of course one of its old partners 'continues to be its member at the time of framing the assessment. In a way it gives a special definition of the expression "reconstituted firm". It implies that if the same business continues and at least one of the old partners continues as a partner, the

change in the remaining personnel of the firm whether one or more partners cease to remain partners or some new ones are added, the firm continues to have a legal entity as a unit of assessment. It has already been noticed that if one of the partners dies or an additional partner is introduced in a partnership, a new partnership comes into existence if the case is viewed strictly in accordance with the provisions of the Indian Partnership Act, but the Act makes a thorough departure from those concepts and expressly provides that such changes would ensure continuity of the firm as a unit of assessment. The matter is not *res integra* and as shall be seen hereinafter is covered by the binding precedents of the Supreme Court. Sections 26(1) and 26(2) of the Indian Income Tax Act, 1922, corresponded to Sections 187 and 188 of the present Act. These Sections came up for consideration in *Shivram Poddar v. Income Tax Officer*¹⁶, The Court observed -

"Under the ordinary law governing partnerships, modification in the constitution of the firm in the absence of a special agreement to the contrary amounts to dissolution of the firm and reconstitution thereof, a firm at common law being a group of individuals who have agreed to share the profits of a business carried on by all or any of them acting for all, and supersession of the agreement brings about an end of the relation. But the Income Tax Act recognises a firm for purposes of assessment as a unit independent of the partners constituting it; it invests the firm with a personality which survives reconstitution. A firm discontinuing its business may be assessed in the manner provided by Section 25(1) in the year of account in which it discontinues its business, it may also be assessed in the year of assessment. In either case it is the assessment of the income of the firm. Where the firm is dissolved, but the business is not discontinued, there being change in the constitution of the firm, assessment has to be made under Section 26(1) and if there be succession to the business, assessment has to be made under Section 26(2). The provisions relating to assessment on reconstituted or newly constituted firms, and on succession to the business are obligatory. Therefore, even when there is change in the ownership of the business carried on by a firm on reconstitution or because of a new constitution, assessment must still be made upon the firm. When there is succession, the successor and the person succeeded have to be assessed each in respect of his actual share."

23. The same view was reiterated in *Commissioner of Income Tax, Bihar and Orissa v. Kirkend Coal Co.* (supra). The Court held -

"Section 44, therefore, only applied to those cases in which there had been discontinuance of the business and not to cases if the business continued after reconstitution of the firm, or there was succession to the business. Cases of reconstitution of the firm or succession to the business of the firm are covered by Sections 26(1) and (2).

If there is reconstitution of the firm by virtue of Section 26, the Income Tax Officer will, in imposing the penalty, proceed against the firm. If there is discontinuance of the business, penalty will be imposed against the partners of the firm."

24. If the Legislature has succeeded in introducing a fiction for which a dissolved firm is deemed

to continue, there appears to be no reason to whittle down the effect of wide and all embracing phraseology employed in Section 187 of the Act which allows an assessment to be framed against a reconstituted firm. This Section makes no distinction between a going concern which is reconstituted or a firm which is dissolved and then reconstituted. In principle there is no difference between a person who ceased to be the partner of a firm on his being dropped as a partner or on his being declared insolvent. Nor does it make any difference if a person ceases to be a partner because of his death. All that the Section requires is that if the same business is continued by a reconstituted firm of which at least one of the old partners continues to be a partner of the new firm, the firm will be treated as a continuing entity in the eyes of law.

25. It is no doubt true that the term "dissolution of a firm" has not been defined in the Act but that does not make any difference because the Legislature has employed compendious phraseology for covering the situations arising out of the dissolution of the firms and the continuance of the same business with different partners. As a matter of fact the inconvenience to the Revenue arising out of the dissolution of the firm as envisaged by the provisions of the Indian Partnership Act was sought to be avoided and it was perhaps rightly considered unnecessary to provide for the definition of the term "dissolution of a firm" in the Act. The language employed in clauses (a) and (b) of sub-section (21) of Section 187 is so wide that it does not admit of any argument that this Section only applies to a continuing unit as understood under the Indian Partnership Act and does not take into its ambit the cases of such firms as are dissolved and reconstituted within the meaning of Section 187 of the Act.

26. The position is made further clear by a perusal of Section 138 of the Act. The words "and the case is not one covered by Section 187" appearing after the words "where the firm carrying on a business or profession is succeeded by another firm" are pregnant with meaning. They show that the Legislature was aware of the argument that some firms reconstituted within the meaning of Section 187(2) of the Act could under the strict provisions of the Indian Partnership Act be regarded as the successors of the old firms. Section 188 has been designedly worded to apply to only those cases of successions of firms which are not covered by Section 187.

27. The other reason which impels me to take this view is based on a perusal of Section 170 of the Act. The marginal note shows that this Section relates to succession to business otherwise than on death. Apparently it covers the case of a new businessman. If he is succeeded by another, the Section postulates the framing of two assessments one up to the date when the succession takes place with regard to the original business and the second with effect from the date of succession up to the end of the assessment year with regard to the successor of the business. Had the partnership firms not been desired to be dealt with differently, then, there was no necessity of enacting Sections 187 and 188 of the Act. Further, if every different firm was to be regarded as a successor of the earlier firm, there was equally no necessity for bringing on the statute book Section 187 of the Act. It is settled law that a Legislature is not deemed to waste its words or to say anything in vain much less to bring on the statute book an entire Section if its purpose can be served otherwise. Every part of a statute has to be given its full meaning and effect and no clause of it has ordinarily to be rejected as superfluous. If the interpretation advanced on behalf of the assessee is accepted, it will have to be held that Sections 187 and 188 were superfluous. I cannot comprehend such a course without entertaining serious apprehensions in my mind. In my considered view, neither on principle nor on a proper construction of the statutory provisions, the view point canvassed on behalf of the assessee can be considered as correct.

28. The aforementioned considerations apart, a similar matter came up for consideration before a Full Bench of the Andhra Pradesh High Court in *The Additional Commissioner of Income Tax, A.P. Hyderabad v. M/s Visakha Flour Mills*¹⁷, After an exhaustive consideration of the entire case law on the subject including *M/s Dharam Pal Sat Dev's case* (supra), the Court held -

"The Court or the income-tax authorities must first apply the provisions of Section 187 to a given case and if the conditions specified therein are satisfied, the procedure contemplated therein for the completion of the assessment of the firm for any previous year must invariably be followed notwithstanding the fact that case may also fall under Section 188. A close and combined reading of Sections 187 and 188 does not warrant or justify the assumption that Section 187 is not applicable to a case of dissolution of a firm. Where, therefore, a firm is dissolved on account of the death of a partner by virtue of the provisions of Section 42(c) of the Partnership Act and the business is continued by the remaining partners or by the remaining partners and another in the place of the deceased partner, there being only a change in the constitution of the firm within the meaning of Section 187(2)(a), the assessment of the firm for the previous year or years must invariably be made under Section 187 and if there be succession to the business by another separate entity owned by altogether different partners, assessment has to be made under Section 188 as it would squarely fall under Section 188. Succession involves change in ownership from one entity to another, although the continuity of the business and its nature are preserved intact. It contemplates or postulates the existence of two separate and distinct entities owned by two different groups of persons and none of the old partners should continue to be partners in the new or reconstituted firm. However, if there are one or more, of the old partners continuing as partners in the second firm, it must be construed to be only a change in the constitution of the firm within the meaning of Section 187 but not a case of succession as contemplated by Section 188."

29. I am in respectful agreement with this view. However, in *Dahi Laxmi Dal Factory v. Income Tax Officer, Sitapur, and another*¹⁸, , a Full Bench of the Allhabad High Court has taken a different view. It observed -

"To sum up the legal position that emerges is that Section 187 applies only where a firm is reconstituted in accordance with Sections 31 and 32 of the Indian Partnership Act, namely, when a new partner is taken or an existing partner retires with the consent of all the partners or without their consent if the contract of partnership so provides. But where a firm is dissolved either by agreement of the partners or by operation of law and another firm takes over the business that will be a case of succession governed by Section 188 of the Act even though some of the partners of the two firms are common. In the instant case, since the erstwhile firm stood dissolved on the death of one of the partners, the petitioner-firm which took over the same business could be assessed only in accordance with Section 188 and a single assessment for the whole year was not valid."

30. It is significant to mention that the Court relied upon the following passage appearing in *Ram*

*Narain Laxman Prasad v. Income Tax Officer*¹⁹, (Allahabad High Court) -

"There is a change in the constitution of the firm when there is a change in the number and identity of the partners. Generally, such a change takes place when a person is introduced as a partner into an already existing firm or a partner retires or is expelled or ceases to be a partner on his becoming insolvent or dies, provided that the partners are agreed to the admission of a new partner or the contract of partnership stipulates that the firm will not dissolve on one of the partners ceasing to be so by reason of any of the events mentioned above. A change in the constitution of the firm must be distinguished from the dissolution of the firm. The former assumes that the firm continues in existence and that there is merely a change in the personnel of the firm. The latter contemplates the end of the contractual relationship between all the partners."

31. In the first place, it has been recognised by the Supreme Court that change in the constitution of a firm occurs when a partner retires, or is expelled, or ceases to be a partner on his becoming an insolvent, or dies. In the second place that case had arisen under the Indian Income-Tax Act, 1922, Section 2(9) which gives a restricted definition of the word 'person'. Once it is held that a partnership firm is a continuing entity and a person for the purpose of framing an assessment under the Act, it makes no difference whether change in the constitution of the firm has been brought about either by virtue of Section 31 or 32 of the Indian Partnership Act or by virtue of Section 41 or 44 of the said Act. Besides, no argument based on the comparative study of Sections 170, 187 and 188 of the Income Tax Act appears to have been advanced before the Full Bench. With utmost respect to the learned Judges who constituted the Full Bench, the view taken by them does not represent the correct statement of law.

32. In *Bhansa Ganusa Pawar and Co. v. Commissioner of Income-Tax, Poona*²⁰, it was held that the legal effect of the death of a partner of the old firm was its dissolution and the firm thereafter constituted was a new firm, but these observations were made in a case under Section 26-A of the Indian Income-Tax Act, 1922, which relates to the procedure in the registration of firms and are of no help to the assessee.

33. It was last of all contended on behalf of the assessee that even if Section 187 of the Act applied to the instant case, it was incumbent upon the Income-Tax Officer to frame two assessments on the assessee - one for the period from April 13, 1967 to October 20, 1967 and the other from October 21, 1967 to April 12, 1968. Reliance in this connection is placed on a Division Bench judgment of the Allahabad High Court in *Commissioner of Income-tax, Lucknow v. Shiv Shanker Lal Ram Nath*²¹. It was held in that case that Section 187 even by implication did not create a fiction that the income derived by the old firm became the income of the reconstituted firm and the Section only makes the new firm liable to be assessed in respect of the income derived by the old firm. It was further held that such income in the hands of the new firm was, to be assessed separately and without clubbing it with the income derived by it during the relevant accounting year. With utmost respect to the learned Judges who decided this case, it may be observed that the very premises, upon which they have acted, do not appear to be sound, either on principle or on authority. It has already been noticed that because of the changed definition of the word "person" a partnership firm has been invested with the status of a

continuing entity and a unit of assessment. The framing of only one assessment against a person is the normal rule and two assessment can be framed against it only under exceptional circumstances recognised by the Act. If a partnership firm which falls within the definition of the word "Person" claims that two assessments should be framed against it, it must show that its case falls squarely within the letter and spirit of Section 188 of the Act.

34. The contrary view taken by the Mysore High Court in *Karupukula Suryanarayana Shetty and Sons v. Commissioner of Income-Tax, Mysore*²², and a Division Bench of this Court in *Hoshiarpur Electric Supply Co. v. Commissioner of Income-Tax, Patiala*, (supra) represents the correct statement of law on the subject and I am in respectful agreement with the same.

35. For the reasons mentioned above, I would answer the question referred to this Bench in favour of the Revenue and against the assessee.

Bhopinder Singh Dhillon, J.

36. I agree.

Harbans Lal, J.

37. I agree.

S.S. Sandhawalia, J.

38. There already exists so much conflict of judicial opinion on the issues arising in this case that it is with considerable diffidence that I feel compelled to add thereto. But for the fact that the view enunciated by my learned brother Sharma, J. would lead to the obliteration of the fundamental distinction betwixt the dissolution of a firm and a mere change in the constitution thereof, I would not perhaps have carried my doubts to the length of this dissent.

37. The facts of the case as also the manner in which this case has come up before this Bench appear, in considerable detail in the Judgment of my learned brother to which reference may be made therefor. I intend herein to eschew repetition both with regard to the issues of fact and law because the matter seems to have been thrashed thread-bare in conflicting judgments of high authority on either side to which reference is inevitably made hereafter. It would, therefore, suffice to broadly indicate the reasons for my preference for one or the other of the rival views.

38. The question of law that has been referred to this Court by the Tribunal is in the following terms :-

"Whether on the facts and in the circumstances of the case, one assessment for both the periods was justified in view of the provisions of Section 187(2) of the Income-tax Act, 1961 ?"

In essence, the significant question that falls for determination here is whether Section 187 of the Income-tax Act, 1961 is attracted to the case of a dissolution of a firm either by operation of law or by the act of parties. To be more precise, whether the words "a change has occurred in the constitution of a firm" embrace within their ambit a legal dissolution of the firm as well.

39. At the very outset I may notice that it was sought to be suggested that the question aforesaid is either well-covered or answered by the earlier decisions of the Supreme Court and, in particular, by *Shivram Poddar v. Income-tax Officer, Central Circle 11, Calcutta* and another (supra). With respect I say that it is not so. I refrain from any attempt to dissent on these binding precedents because it appears plain to me that if their Lordships of the Supreme Court had either in terms or by necessary implication decided the issue, there could not possibly have been so much divergence of judicial opinion in the various High Courts despite those decisions which were rendered long ago. Without needless elaboration I may say that *Shivram Poddar's* case aforesaid does not seriously advance the contention raised on either side and it is to be hoped that their Lordships of the Supreme Court would soon have occasion to resolve the head on collision of precedent on this point which is inevitably noticed hereinafter.

40. It was said at the outset that for the construction of Section 187 and the two succeeding Sections thereto, no reference to the relevant provisions of the Indian Partnership Act need be made and, indeed, it would be almost barred. It was sought to be contended that though a particular firm in view of the provisions of Indian Partnership Act pertaining to dissolution may stand dissolved, yet it would not be deemed to be so for the purposes of the Indian Income-tax Act. Reliance in support of this proposition was sought to be placed on the Division Bench judgment of this Court in *Dharam Pal Sat Dev v. Commissioner of Income-tax, Punjab, J. & K. and Chandigarh* (supra).

41. With great respect I am unable to first subscribe, to such a proposition. Particular reference in this context is called for to Section 2(23) of the Indian Income-tax Act, which is in the following terms :-

"2. *Definitions.* - In this Act, unless the context otherwise requires :-

(23) "firm", "partner" and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (IX of 1932), but the expression "partner" shall also include any person, who, being a minor, has been admitted to the benefits of partnership."

42. Now a reference to Section 2 of the Indian Partnership Act would show that the aforesaid three terms do not find any mention in that Section which is the defining section. However, Section 4 of the said Act succinctly gives the basic elements of the legal concept of "Partnership" under the Act. The words, "firm" and "partner" are not in terms defined but the reference thereto in the said Section is more or less descriptive. It is in this context that the language of Section 2(23) quoted above assumes some significance because it says that these terms are to have the same meaning in the Indian Income-tax Act as are assigned to them under the Indian Partnership Act. Therefore, it follows that wherever these terms are used in the Indian Income-tax Act, all the legal nuances of the concepts of "partnership", "firm" and "partner", are automatically imported into the latter Act. This has been made so by the specific provisions of Section 2(23).

43. On principle also the Position would be identical. It would be trite learning to say that where there is a patent conflict betwixt the provisions of the Partnership Act and of the Income-tax Act, the latter being the special statute would govern the cases thereunder to the exclusion of the general one. However, first there has to be a clear conflict and one cannot unnecessarily and needlessly imagine one. Speaking for, myself, I am unable to discover any patent conflict in the

concepts of "firm" and "partnership" as used in Sections 187, 188 and 189 of the Income-tax Act and the corresponding provisions of the Partnership Act. In the absence of such conflict, it appears to me that a reference to the Indian Partnership Act is not only desirable but absolutely necessary to correctly construe the relevant provisions. The judgments of their Lordships of the Supreme Court are legion in which whilst construing the provisions of the Indian Income-tax Act they have made inevitable and innumerable references to the Partnership Act wherever it becomes necessary to construe the words, "firm", "partner" and "partnership", etc., for assessment under the Income-tax Act.

44. Having cleared the ground regarding the applicability of the Partnership Law for construing the relevant provisions of the Indian Income-tax Act, it is obvious that the controversy here must inevitably revolve round the language of the provisions of the Income-tax Act. The primary Section which calls for interpretation is 187, though in the context in which it has been laid, a reference to the succeeding Sections 188 and 189 cannot possibly be avoided. For facility of reference these may first be set down :-

"187. 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,

Provided that -

(i) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same; and

(ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

(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 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 shares of some of them.

188. Succession of one firm by another firm. - Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by Section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of Section 170.

189. Firm dissolved or business discontinued. - (1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Income-tax

Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) * * *

(3) * * *

(4) * * *

(5) * * *".

As I said earlier, the core of the matter here is whether the words "that a change has occurred in the constitution of a firm" used in the opening part of Section 187(1) of the Act include within their ambit the dissolution of a firm also. With great respect, I would say that they do not. The two concepts of a mere change in the constitution of the firm, and its total annihilation which is technically called dissolution are entirely distinct and separate from each other. These are indeed a class apart. The distinction between the two is fundamental and has always been so construed in Law of Partnership. It is unnecessary for our purposes to advert to the English Law of Partnership and the authoritative work of Lindley thereon to highlight the same. It would perhaps suffice to mention that the Indian Partnership Act, 1932 treats the two concepts separately and in sharply divided compartments. Chapter V thereof is headed as 'Incoming and outgoing Partners' and thus deals clearly with the subject of a change in the constitution of a firm whilst its identity as such remains intact. Sections 31 to 34 provide for the introduction, retirement, expulsion and insolvency of a partner which will lead to a change in the constitution of the firm. Herein the relationship of partners *inter se* continues though there are changes in the personnel thereof. It is significant to note that Section 32(2) in terms uses the terminology of a "reconstituted firm".

45. On the other hand the succeeding Chapter VI, as its very heading indicates, relates to the dissolution of a firm. Apart from defining dissolution under Section 39, the various modes of effecting the same are then laid out in Sections 40 to 44. It appears to be plain that the Indian Partnership Act clearly recognises the sharp distinction between a firm which is merely reconstituted and one which is dissolved.

46. It is well-settled on high authority that when the Legislature in a statute uses a term of art which has acquired a distinct legal connotation, then it must be presumed that the same has been used in its technical and legal sense. Lord Macnaghten in the *Commissioner for Special purposes of the Income-tax v. John Frederick Pemsel*²³, had laid down as follows :-

"In construing Acts of Parliament, it is a general rule, not without authority in this House that words must be taken in their legal sense unless a contrary intention appears."

The aforesaid view has been affirmed in *Chesterman and others v. Federal Commissioner of Taxation*²⁴, and *Laurence Arthur Adamson and others v. Melbourne and Metropolitan Board of*

*Works*²⁵, Herein the Legislature has advisedly used the phrase of a change in the constitution of a firm in Section 187(1) which bears a technical and legal connotation in the Partnership Law. It has, therefore, to be construed as such and not something interchangeable with the dissolution of a firm which is a thing apart. There is not the least indication of any intention to the contrary which could possibly suggest that these words were intended to include within them the dissolution of a firm as well.

47. That the Legislature was aware of and fully conscious of the distinction between a mere change of the constitution of a firm and its dissolution appears to be further evident when reference is made to the scheme of Chapter XVI of the Indian Income-tax Act. This contains special provisions applicable to firms. The Chapter is divided into three sections and the last section (c) which contains the material Sections 187 to 189 bears the heading - "Changes in constitution, succession and dissolution". This in itself indicates that changes in constitution and dissolution are being dealt with separately. To particularise, whilst Section 187 deals with the former, Section 189 in terms provides for the twin contingency where a business or profession carried on by a firm has been discontinued or where it has been dissolved. This section, therefore, in terms deals with the cases of dissolved firms for the purposes of assessment of income-tax. Therefore, it appears inapt to me to hold that the dissolution of a firm which is expressly provided by a separate section would nevertheless be included in Section 187 which on the face of it deals with an altogether different subject. Such an interpretation tends to lead to a needless overlapping of the two sections. To my mind, the better view clearly is that dissolution would be governed entirely by Section 189 whilst mere changes in the constitution of the firm by Section 187 and the question of succession if and when it arises is being amply covered by the intervening Section 188.

48. It has to be pointedly borne in mind that the word, "dissolution" as such or even the concept of 'dissolution of a firm' is neither defined nor elaborated in the Indian Income-tax Act. If it were so then perhaps an argument could be raised that for the purposes of assessment the Indian Income-tax Act being the special statute would prevail over the Partnership Act and, therefore, the latter must yield to the former. However, it is the admitted position that the Indian Income-tax Act does not even remotely provide or prescribe for the mode of either creating partnerships or of dissolving them. Therefore, no question of any conflict whatsoever betwixt the two Acts as regards the meaning to be attributed to the word 'dissolution' can possibly arise. Therefore, whither shall one turn for the true meaning of the dissolution of a firm' when used in the Indian Income-tax Act ? The plain answer is that resort must be had to the law as laid out in the Indian Partnership Act. The relevant provisions may be usefully referred to :-

"39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm."

"42. Subject to contract between the partners, a firm is dissolved -

* * *

(c) by the death of a partner; and

* * *"

As against the above, the Indian Income-tax Act is wholly silent as to what happens to a firm when one of its partners dies. As in the present case itself, how is it to be determined as to what legal consequences would ensue on the death of Shri Mukand Lal on the 20th of October, 1967. Would the firm stand dissolved or be deemed to continue? To my mind, the answer is, indeed, plain and reference necessarily would have to be made to the Partnership Act as regards the legal consequences flowing from that death because the Income-tax Act does not even remotely provide or prescribe for such a situation. In the light of the well-known concept of 'dissolution of a firm' in partnership law, can it possibly be, said that 'the dissolution of a firm' when used in the Indian Income-tax Act is to be construed de hors its concept and definition under the partnership law.

49. Similarly, the concept of 'a change in the constitution of a firm' has neither been defined nor elaborated in the Indian Income-tax Act. Apart from the fact that the phrase is more or less an intrinsic term of art the same has been dealt with specifically in Chapter V of the Indian Partnership Act which provides for the coming in and going out of partners while the identity of the firm as such continues. It hence appears to me that both for the meaning of the 'dissolution of a firm' as against 'a change in the constitution of a firm', the true key is provided by the Indian Partnership Act whilst the Indian Income-tax Act is totally silent thereon. It is with that clue that one has to first determine on the specific matrix of facts in each case, whether a firm stands dissolved or whether it involves a mere change in the constitution thereof. It is only when that legal question is answered that the issue arises whether Section 187, 188 or 189 would be attracted thereto for the purposes of income-tax assessment. The other suggested mode of determining this issue by attempting to apply the provisions of Section 187(2) appears to me with great respect like putting the cart before the horse. Indeed the whole of Section 187 would be attracted only and come into play on the pre-condition that, in fact, only a change in the constitution of a firm has taken place. Its provisions, as they stand, are not meant to determine what may be called a jurisdictional fact, namely, whether the firm is dissolved or there is merely a change in the constitution thereof. It is only after that basic question is decided by applying the partnership law that the issue would arise whether Section 187 is to be applied or the other two Sections.

50. On behalf of the Revenue an attempt was made to build an argument on the basis of Section 187(2) to contend that even dissolution would be within the ambit and scope of Section 187 as a whole. This attempt, however, appears to me as begging the very question which falls for determination. This question arises at the very threshold when Section 187 is sought to be applied and has to be determined on the finding whether there has been a mere change in the constitution of the firm or whether the said firm stands dissolved in the eye of law. If it is the former, then Section 187 would be attracted in its totality and if necessary sub-Section (2) would come into play. On the other hand, if at the very inception it is clear that what has taken place is not a mere change in the constitution but is in law a dissolution of the firm then the whole of Section 187 becomes entirely inapplicable to the situation. Therefore, sub-Section (2) comes into play only after the basic question, whether there is or there is not a change in the constitution has been determined. It cannot be brought into operation or used for the purposes of determining as to when a dissolution of the firm takes place. The provisions of sub-Section (2), to my mind, are merely inclusive which qualify or add to the basic concept of the partnership law regarding a reconstituted firm. For instance, where all the partners continue in the same firm but some

change is made in their respective shares in the profits then in the eye of partnership law it would not necessarily amount to a change in the constitution of the firm but for the special purposes of the Income-tax Act this situation has been also added into that concept. Therefore, in my view sub-Section (2) is of little aid for the purposes of the Revenue because it is in no way exhaustive nor does it amount to the definition of what is a change in the constitution of a firm but merely qualifies or adds to that known concept for the particular purposes of tax assessments.

51. Assuming entirely for argument's sake for a moment that sub-Section (2) would also be applicable, it has been plausibly argued on behalf of the assessee that then clause (a) thereof would come into play. That provision mentions that 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 original partners continue to be in the firm then it would be construed for the purposes of the Act as a change in the constitution thereof. Significance attaches here to the words 'cease to be a partner'. It was pointed out that the language of clause (a) is pointedly against the background of the partnership law and ceasing to be a partner would arise from either the retirement, the expulsion or the insolvency of the partner, etc. It does not contemplate the ceasing to be a partner because of death. The death of a partner in the eye of law leads to the total dissolution of the firm unless partners have expressly provided to the contrary by their agreement. That is the result of the general law and the particular provisions of Section 42 of the Partnership Act. The Income-tax Act does not, either by express provision or by necessary implication, override that situation. As noticed earlier, the concept of the words 'firm' and 'partnership in the Income-tax Act is the same and, indeed, identical with that under the Indian Partnership Act in view of the specific prescription of Section 2(23). Therefore, it seems inapt to hold that whilst the Partnership Act categorically provides that in the absence of a contract to the contrary the firm would dissolve on the death of one of its partners yet under the Income-tax Act, such a death would be a mere change in the constitution of the firm, I am not saying that the Indian Income-tax Act could not by specific prescription do so but the language used in Sections 187, 188 and 189 in my view does no such think either expressly or impliedly and hence there is no warrant to arrive at such an anomalous result.

52. The view I am inclined to take is amply supported by precedent. It is first to be remembered that in the reference order of this very case, Mahajan, J., speaking for the Division Bench has in a very lucid exposition repelled the reasoning of the earlier view in Dharampal Sat Dev's case (supra). To avoid repetition it suffices to say that I entirely agree with that line of reasoning. In this context it is again worthwhile recalling that the learned authors of the authoritative treatise of Kanga and Palkhiwala's Law and Practice of Income-tax (7th Edition) have also taken the view (at page 1025, foot-note 23) that the decision in Dharampal Sat Dev's case is incorrect and that it proceeds on a misconstruction of Section 187(2). Again, a number of decisions to which reference is made hereafter have expressly dissented from the view in the case aforesaid.

53. I wish to refrain from quoting copiously from the mass of case law on the point and deem it sufficient to mention that the Allahabad Full Bench in *Dahi Laxmi Dal Factory v. Income-tax Officer, Sitapur and another*²⁶, succinctly and lucidly puts forth the view point with which I am inclined to agree. Gulati, J. speaking for the majority therein after an exhaustive discussion both on principle and precedent has concluded as follows :

"To sum up, the legal position that emerges is that Section 187 applies only where a firm

is reconstituted in accordance with Sections 31 and 32 of the Indian Partnership Act, namely, when a new partner is taken or an existing partner retires with the consent of all the partners or without their consent if the contract of partnership so provides. But where a firm is dissolved either by agreement of the partners or by operation of law and another firm takes over the business that will be a case of succession governed by Section 188 of the Act even though some of the partners of the two firms are common. In the instant case, since the erstwhile firm stood dissolved on the death of one of the partners, the petitioner-firm which took over the same business could be assessed only in accordance with Section 188 and a single assessment for the whole year was not valid."

It is worth noticing that in the above-quoted case reliance was placed, by way of analogy on the Division Bench judgment of the Bombay High Court in *Bhauasa Ganusa Pawar and Co. v. Commissioner of Income-tax, Poona* (supra). A Division Bench of the Madras High Court in *Kaithari Lungi Stores v. Commissioner of Income-tax, Madras-1*²⁷, has then approvingly followed the majority view in the *Dahi Laxmi Dal Factory's* case (supra). Then, a Division Bench of the Gujarat High Court after examining the matter on principle has expressly chosen to follow the Allahabad Full Bench in *The Additional Commissioner of Income-tax, Gujarat, Ahmedabad v. M/s Harjivandas Hathibhai*²⁸,

54. The contrary view stands well-expressed in the Full Bench judgment of the Andhra Pradesh High Court in *The Additional Commissioner of Income-tax, A.P., Hyderabad v. M/s Visakha Flour Mills* (supra).

55. It is evident from the above that the Allahabad, Bombay, Gujarat and Madras High Courts have succinctly taken the view that the dissolution of a partnership firm is not a matter covered by Section 187 of the Indian Income-tax Act. The weight and preponderance of authority is, thus, clearly for this view as against the other view accepted by the Andhra Pradesh High Court only.

56. Lastly, with so much conflict of precedent it would have to be conceded that two rival views are clearly, possible as regards the interpretation of the relevant provision. Once such a situation arises their Lordships of the Supreme Court have authoritatively laid down the side on which the Courts tilt. In the *Central India Spinning and Weaving and Manufacturing Co. Ltd. The Empress Mills, Nagpur v. The Municipal Committee*²⁹, Kapur, J., speaking for the Court, observed :

"In construing these words of the statute if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him."

In the particular context of the Income-tax Act, their Lordships again in *Commissioner of Income-tax, Patiala v. Shahzada Nand and Sons and others*³⁰, clearly observed (at page 400) that in case of doubt, the construction most beneficial to the subject is to be adopted. In *Commissioner of Income-tax, Punjab v. Kulu Valley Transport Co., P. Ltd.*³¹, their Lordships of the Supreme Court on appeal from a decision of this High Court have again reiterated the principle in these terms :

"It cannot be overlooked that even if two views are possible the view which is favourable to the assessee must be accepted while construing the provisions of a taxing statute."

57. For the reasons aforesaid I hold with respect that Dharampal Sat Dev's case does not lay down the law correctly and would overrule the same. I would also respectfully record my dissent with the view expressed by the Andhra Pradesh High Court.

58. The answer to the question referred to this Bench is, in the result, rendered in the negative, i.e., in favour of the assessee and against the revenue.

O. Chinnappa Reddy, J. :-

59. I have had the advantage of reading the opinions prepared by my brothers Sandhawalia and Sharma, JJ. I agree with the opinion of Sharma, J. I would, however, like to add a few words.

60. First, with regard to the adoption of the meaning given to expressions and situations in the Indian Partnership Act in interpreting the provisions of the Income Tax Act, it is a well known rule of construction that in construing a word in an Act, caution is necessary in adopting the meaning ascribed to the word in other Acts. (Craies on Statute Law, Seventh Edition, page 164). In *Macbeth v. Chislett*³², it was observed by the House of Lords as follows :-

"It would be adding a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to, such an interpretation is given to it for the purpose of that Act alone."

61. In *Adamson v. Malbourne Board of Works* (supra), the Privy Council said :-

"It is always unsatisfactory and generally unsafe to take the meaning of words used in an Act of Parliament in the definition clauses of other statutes dealing with matters more or less cognate."

62. In *D.N. Banerjee v. P.R. Mukherjee and others*³³, the Supreme Court said :-

"Though the definition may be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decision on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful but they cannot be taken as guides or precedents."

63. In *State of Bihar v. Ram Naresh*³⁴, the Supreme Court hold that there was no reason for limiting the connotation and significance of the words used in one context with reference to the meaning given to those words used in other Sections in another context. They observed that words must be considered with regard to the particular context in which they were used and with

regard to the scheme and purpose of the provision under consideration.

64. Thus, if a word has a certain meaning in one statute or in a situation is followed by certain consequences under one statute, it does not follow that the word will have the same meaning in another statute or that the situation will be followed by the same consequences under the other statute. Regard must be held to the context, the intention of the Legislature and the object sought to be achieved by the two statutes. I, therefore, agree with the approach of Sharma, J., to the problem on hand.

65. My brother Sandhwalia, J., has observed that the conflict of precedent, in the present case indicated a clear possibility of two views and that where two views were possible, that which was favourable to the assessee should be accepted. I am afraid that I cannot subscribe to the proposition that a Judge faced with a conflict of precedent should abdicate his judgment and accept the view which is favourable to the assessee. It is only where a Judge finds that two equally reasonable views are possible and he is unable to decide which is the better view, that he may adopt the rule of interpretation that the view favourable to the assessee might be accepted. In *Commissioner of Wealth Tax v. Kirpa Shankar*,³⁵ the Supreme Court pointed out as follows :-

"It is true that a taxing provision must receive a strict construction at the hands of the Courts and if there is any ambiguity, the benefit of that ambiguity must go to that assessee, but this is not the same thing as the saying that a taxing provision should not receive a reasonable construction."

66. In every case it is duty of the Judge to consider which is the more reasonable view and accept that which is more reasonable. As I said it is only where a Judge finds that both the views are equally reasonable that he may resort to the rule of interpretation favouring the assessee. I am in clear agreement with the view expressed by Sharma, J.

ORDER OF THE COURT

67. In view of the majority judgment, the question referred to the Bench is answered in favour of the Revenue and against the assesseees.

Reference assured.

Cases Referred.

11TR 11/72, decided on 4th January, 1973
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329 ITR 535
4(1955) 27 ITR 88
5AIR 1948 PC 100
61953 A.I.R. (SC) 455 : (1953) 24 ITR 405
751 ITR 823
8(1969) 74 ITR 67
9(1971) 79 ITR 164
10(1971) 81 ITR 409
11(1974)97 ITR 302

12(1956) 29 ITR 535
13(1961) 41 ITR 425
14(1962)44 ITR 739
15(1966)17 STC 326
16(1964)51 ITR 823 (S.C)
171977 Taxation Law Reporter 41
18(1976)103 ITR 517
19(1972)84 ITR 223
20(1966) 62 ITR 75
21(1977) 106 ITR 342
22(1973)92 ITR 141
23 1891 A.C. 531
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25AIR 1929 PC 181
26103 (1976) ITR 517
27 (1976)104 ITR 160
281976 Tax LR 1107
29AIR (1966)60 ITR 392,
30 1958 SC 341
311970 A.I.R. (SC) 1734 : (1970)77 ITR 518
321910 AC 220
33AIR 1953 SC58
34AIR 1957 S.C 389
35 1971(2) S.C. cases 570