

Cit Vs Panchratan Hotels Pvt. Ltd (HP High Court)

Good case on the provision of section 170.

Section 170 provides that where there is a “succession of business”, the predecessor has to be assessed in respect of the income upto the date of succession and the successor has to be assessed thereafter. 100% of the assessee’s shares were sold by the existing shareholders to another person. The CIT in revision took the view that the result of the said transfer of shares was that there was a “succession” and that the loss incurred prior to the date of succession could not be allowed to the “successor” assessee. The assessee’s appeal was allowed by the Tribunal. On appeal by the Revenue, HELD dismissing the appeal:

(1) The term “succession” in s. 170 has a somewhat artificial meaning. The tests of change of ownership, integrity, identity and continuity of a business have to be satisfied before it can be said that a person “succeeded” to the business of another;

(2) Even if it is accepted that by a transfer of shares u/s 2(47), there is a transfer in the right to use the capital assets of the company, still s. 170 is not attracted because there is no “transfer of business”. A company is a juristic person and owns the business. The share holders are not the owners of the company. By a transfer of the shares, there is no transfer so far as the company is concerned