(2003) 04 AHC CK 0032

In the Allahabad High Court

Case No : IT Reference No. 334 of 1982 25 April 2003

Commissioner of Income Tax APPELLANT

Vs

Avinash Kumar Maheshwari RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) 133 TAXMAN 402

Hon'ble Judges : Sudiur Narain, J;Sudir Narain, J;D.P. Gupta, J

Bench : Full Bench

Judgement

The following question has been referred to this court for decision :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the partial partition was legally valid ?"

2. Briefly stated the facts are that Shri Avinash Kumar Maheshwari, Hindu undivided family (hereinafter referred to as the "HUF") (consisting of self, his wife Smt. Lata Maheshwari and his minor son Master Abhishek Maheshwari made a claim for partial partition in the assessment year 1977-78. In the application it was claimed that the partial partition had been affected on 25-5-1976 by Shri Avinash Kumar Maheshwari, the Karta in exercise of his "patria potestas" and in accordance therewith Shri Avinash Kumar Maheshwari was given Rs. 75,619 and Rs. 65,000 each were given to Smt. Lata Maheshwari and Master Abhishek Maheshwari constituting a new entity called Master Abhishek Maheshwari, HUF. The assessee claimed before the Income Tax Officer that under the Hindu law a father could affect partition when the other coparceners are minors and that this right was enjoyed by him as part of his "patria potestas". The Income Tax Officer did not accept the plea of the assessee. The assessee preferred an appeal and the Appellate Assistant Commissioner accepted the submissions made on behalf of the assessee and allowed the appeal. The department preferred an appeal before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal of the department.

3. The question as to whether partial partition can be made by the Karta of the family was considered in Commissioner of Income Tax Vs. Rajeev Maheshwari (HUF), , wherein it was held that a partition can be affected by the Karta of the family.

4. In view of the above, we answer the question referred to above in favour of the assessee and against the department.

5. The reference is accordingly disposed of. The parties shall bear their own costs.

