(1980) 05 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No''s. 27 (M) , 28 (M) , 29 (M) , 30 (M) , 31 (M) and 36 (M) of 1976 and 18 (M) of 1980

Commissioner of Income Tax APPELLANT

Vs

Gaurishankar Agarwalla RESPONDENT

Date of Decision : 13-05-1980

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 64
Partnership Act, 1932 — Section 2(23), 4

Citation : (1983) 140 ITR 424

Hon'ble Judges : D. Pathak, Acting C.J.;K.N. Saikia, J

Bench : Division Bench

Judgement

Pathak, Actg. C.J.

1. The above numbered applications are u/s 256(2) of the I.T. Act, 1961, asking this court to call for a statement from the Tribunal on the following question of law :

"Whether, on the facts and in the circumstances of the case, and on a proper construction of Section 4 of the Indian Partnership Act, 1932, Section 2(23) and Section 64 of the Income Tax Act, 1961, the Tribunal was justified in holding that the assessee-individual, Shri Gaurishankar Agarwalla, was not the partner of the firm, M/s. Chandulal Gaurishankar, and in holding on that basis that the share of profits arising in the hands of the minor sons of the assessee in the said firm were not includible in the assessment of the assessee u/s 64(ii) of the Income Tax Act, 1961?"

2. We have very carefully perused the order of the Tribunal and find that there is a categorical finding recorded by the Tribunal to the effect that Shri Gaurishinkar Agarwalla, although he was a member of the HUF, yet since 1964, he formed his own HUF with his wife and minor daughters. This finding has been recorded by the Tribunal, and, therefore, we find that the question sought to be called for from the Tribunal does not arise out of the impugned order as the same is based

on the findings of facts by the Tribunal.

3. Accordingly, we are not inclined to call for a statement of case on the question of law sought to be raised by the petitioner from the Tribunal. Hence, these petitions are rejected. In the facts and circumstances of the case, we pass no order as to costs.

