(1990) 07 DEL CK 0010

In the Delhi High Court

Case No : Income-tax Case No. 163 of 1984

Commissioner of Income Tax APPELLANT

Vs

H.K. Sehgal RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Citation : (1991) 190 ITR 131

Hon'ble Judges : S. Duggal, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Gupta, for the Appellant;

Judgement

1. The petitioner seeks reference of the following question of law to this court :

"Whether the Tribunal was correct in law in holding that the division on partition of the properties and assets of the Hindu undivided family took place on March 23, 1972, ignoring the Explanation below section 171 and also the date November 2, 1972, of the award after which the said properties and assets were actually apportioned amongst the coparceners ?"

2. The short question which is involved in this petition is whether the family was disrupted on March 23, 1972, or on November 2, 1972, when the award of the arbitrator was given.

3. It appears that there were differences amongst members of the assessed-family and a sole arbitrator was appointed. According to the Tribunal, the sole arbitrator finalised his award on March 23, 1972, and then some time was taken in obtaining stamp paper and the award was make on November 2, 1972, but according to the award, it was to be operative with effect from March 23, 1972.

4. The Income Tax Officer did not accept March 23, 1972, as the date of the disruption of the family, inter alia, on the ground that the award had not been registered. The Appellate Assistant Commissioner of Income Tax took a contrary view and came to the conclusion that it was not necessary to have the award

registered and even an oral partition can take place. In any case, the award had been registered subsequently and as the date of disruption as per the award was stated to be March 23, 1972, that is the date which was accepted.

5. Further appeal to the Tribunal was also made with the same result.

6. It is pertinent to point out that before the Tribunal and, in fact, even before the Income Tax Officer or the Appellate Assistant Commissioner it was not contended that there was no physical partition of the properties on March 23, 1972 and, because of this there is no reference to the Explanation to section 171 of the Act, and, Therefore, in our opinion, it cannot be said that the question proposed is one which arises from the order of the Tribunal because this question was never agitated nor considered by the Tribunal. In any case, the question as to on which date the partition took place is a pure question of fact and no question of law arises. The petition is, Therefore, dismissed. There will be no order as to costs.

7. Petition dismissed.