**(1988) 11 P&H CK 0121**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Income-tax Reference No''s. 80 and 81 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Narinder Kumar — RESPONDENT

**Date of Decision :** 28-11-1988

**Acts Referred:**
Income Tax Act, 1961 — Section 183, 64

**Citation :** (1989) 177 ITR 515

**Hon'ble Judges :** S.S. Sodhi, J;Gokal Chand Mital, J

**Bench :** Division Bench

**Advocate :** Ashok Bhan and Ajay Mittal, for the Appellant; Bhagirath Dass, Senior Advocate and Ramesh Kumar, for the Respondent

## Judgement

Gokal Chand Mital, J.—Narinder Kumar, an assessee in his capacity as karta of a Hindu undivided family consisting of himself, his wife and a minor son, was a partner in two firms. On March 31, 1973, a partial partition of the Hindu undivided family was effected whereby the shares in the two firms were divided equally between the assessee, his wife and minor son. The Income Tax Officer accepted the partial partition of the Hindu undivided family. For the assessment years 1974-75 and 1975-76, while faking up the case of the assessee, the Income Tax Officer included the share income of the wife arid the minor son in the income of the assessee received from the two firms in which the assessee was a partner in his capacity as karta of the Hindu undivided family in view of the provisions of Section 64 read with Section 183(b) of the Income Tax Act, 1961 (hereinafter called "the Act"), on the ground that the partial partition deed provided that the assessee was to receive all profits of the two partnership firms and thereafter the same were to be divided between them in equal shares. This, according to the Income tax Officer, amounted to the creation of a sub-partnership. On appeal, the Appellate Assistant Commissioner considered another clause of the partial partition deed whereby an overriding title, regarding the shares of the minor and the wife, was created on the assessee as he had undertaken to be liable to account for all profits that he may receive from the two partnership'' firms to his wife and son and gave relief to the assessee. The Tribunal agreed with the Appellate Assistant Commissioner and at the instance of the Revenue, the following two ques tions have been referred for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that no sub partnership consisting of the assesses, his wife and his son came into existence on partial partition by virtue of the agreement dated March 31, 1973 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the shares of the assessee''s wife and his son were not liable to he included in the total income of the assessee u/s 64 of the Income Tax Act, 1961 ?"

2. On behalf of the Revenue, reliance has been placed on the decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Mahendrasingh Mohansingh, whereas counsel for the assessee has placed reliance on Commissioner of Income Tax Vs. Ram Narain and Others, a decision of our court and Commissioner of Income Tax, Andhra Pradesh Vs. Pabbati Shankaraiah and Others, of the Andhra Pradesh High Court.

3. After considering the provisions of the Act and the above cited judgments, we are of the opinion that Commissioner of Income Tax, Gujarat Vs. Mahendrasingh Mohansingh, and Commissioner of Income Tax Vs. Ram Narain and Others, are distinguishable on facts and the facts of the present case are closer to Commissioner of Income Tax, Andhra Pradesh Vs. Pabbati Shankaraiah and Others, as in that case also there was a clause creating an overriding obligation on the karta to make over the income of the other members of the family with whom a partial partition had been effected and it was held that the share of each such member from the inception accrued to them, creating thereby a superior right in their favour and was thus not assessable in the hands of the father who was the karta. No such point arose for consideration in the other two aforesaid cases and hence they are distinguished.

4. In Commissioner of Income Tax, Andhra Pradesh Vs. Pabbati Shankaraiah and Others, the matter has been considered threadbare and agreeing with the view taken therein, it is held that the Tribunal was right in holding that no sub-partnership consisting of the assessee, his wife and son came into existence on the partial partition, which was effected by a partial partition deed dated March 31, 1973, and thus the shares of the wife and the son received from the two partnership firms, were rightly not included in the income of the assessee u/s 64 of the Act.

5. Accordingly, we answer both the questions in favour of the assessee, i.e., in the affirmative. The assessee will have his costs which are quantified at Rs. 500.