(1989) 03 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 34 of 1981

Commissioner of Income Tax APPELLANT

Vs

Shankar Lal RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:
Income Tax Act, 1961 — Section 171

Citation : (1989) 80 CTR 240 : (1989) 178 ITR 647 : (1989) 45 TAXMAN 349

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

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; Vinod Khungar and Sandeep Khungar, for the Respondent

Judgement

Gokal Chand Mital, J.—A Hindu undivided family of Shankar Lal, through him as karta, was a partner in two firms. On March 14, 1974, a deed of partial partition was executed and was made effective from April 1, 1973. On April 1, 1973, Rs. 1,54,679.41 was the credit balance of the Hindu undivided family in those firms. In view of the partial partition, the amount was equally divided between the four members of the Hindu undivided family in the books of account of the Hindu undivided family which was reflected in the books of account of the two firms, and they were to divide the profit and loss from those firms in equal shares. For the assessment year 1974-75, an application u/s 171 of the Income Tax Act, 1961 (for short "the Act"), was filed by the Hindu undivided family to get the partial partition recognised.

2. The Income Tax Officer rejected the partial partition. On the assessee''s appeal, the Appellate Assistant Commissioner accepted the partition. The Department failed in the appeal before the Tribunal, and at the instance of the Department, the Income Tax Appellate Tribunal, Amritsar, has referred the following question for opinion ;

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that there was a valid partial partition ?"

3. On a consideration of the matter, we are of the view that the dispute is largely a question of fact in the circumstances of the case and hardly a question of law arises on the findings recorded. It has been found that the assets with the two firms in which the Hindu undivided family was partner, were divided between the members of the Hindu undivided family by metes and bounds, and this was not only reflected in the books of account of the Hindu undivided family but also in the books of account of the firms in which the Hindu undivided family was partner, The members of the Hindu undivided family, after partition, agreed to share the profits and losses from the two firms in equal shares. Once actual division of the assets of the Hindu undivided family has been proved, the partial partition had to be accepted. Learned counsel for the Revenue could not point out how it could be said that there was no physical division of the Hindu undivided family assets.

4. Accordingly, the referred question is answered in favour of the asses-see, that is, in the affirmative. No costs.

