(1989) 04 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 96 of 1983

Commissioner of Income Tax — APPELLANT

Vs

S.R. Uppal — RESPONDENT

Date of Decision : 27-04-1989

Acts Referred:

Citation : (1989) 180 ITR 285

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

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; K.K. Cuccria, D.R. Miglani and Anil Miglani, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here pertains to what purported to be a transfer of immovable property of the firm to three out of its four, partners by mere entries in the books of the firm without any deed of registration.

2. This question had earlier arisen while dealing with the case of the firm in question in Income Tax Reference No. 77 of 1982 (Commissioner of Income Tax Vs. Bharati Engineering Corporation,) decided today, that is, April 27, 1989, where it is held that no transfer of immovable property of the firm can be made by it to its partners by mere entries in its books. This being so, the properties in question have to be treated and assessed as being those of the firm and, consequently, the income that arises from these properties must be assessed in the hands of the firm and not the partners.

3. The Income Tax Officer, treating the entries in the firm''s books as transfer of immovable property by the firm to its partners, proceeded to assess the income from the property in question in the hands of the individual partners, while at the same time, this income was also treated as that of the firm. The Appellate Assistant Commissioner, on appeal, deleted this addition from the income of the assessee-partners. This order was upheld by the Tribunal. It is in these circumstances that the following question has now been referred for the opinion

of this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the decision of the Appellate Assistant Commissioner deleting the property income on the footing that the transfer of property by the firm to partners by means of book entries was inoperative though the Income Tax Appellate Tribunal''s finding to that effect reached in connection with the assessment year 1976-77 in the firm''s case is still pending adjudication by the Hon''ble High Court ?"

4. The question posed has clearly to be answered in the affirmative, in favour of the assessee and against the Revenue keeping in view our decision rendered earlier while dealing with the case of the firm in Income Tax Reference No. 77 of 1982 (Commissioner of Income Tax Vs. Bharati Engineering Corporation,) referred to above.

5. This reference is disposed of accordingly. There will, however, be no order as to costs.

