(1988) 12 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 159 of 1980

Commissioner of Income Tax	APPELLANT
Vs	
Varinder Kumar	RESPONDENT

Date of Decision : 01-12-1988

Acts Referred:
Income Tax Act, 1961 — Section 183

Citation : (1989) 79 CTR 183 : (1989) 180 ITR 180

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.—Varinder Kumar, the assessee, in his capacity as karta of a Hindu undivided family (HUF), was a partner of Nagesh Engineering Works. On April 1, 1971, a deed of partnership of the Hindu undivided family was executed whereby the members of the Hindu undivided family were to share the profits received from the aforesaid firm and overriding title was created in favour of the wife and children against Varinder Kumar,

2. For the assessment year 1974-75, when the assessment proceedings relating to Varinder Kumar, as an individual, were taken up by the Income Tax Officer, the case of the assessee was that he was liable to be assessed on his one-fourth share of the income received from the partnership firm. The Income Tax Officer took the view that the assessee, his wife and two minor sons constituted a sub-partnership and included the whole of the income received from the partnership firm in his hands by applying the provisions of Section 183(b) of the Income Tax Act, 1961. He failed before the Appellate Assistant Commissioner but, on further appeal to the Income Tax Appellate Tribunal, Amritsar, he succeeded. At the instance of the Revenue, the Tribunal has referred the following questions for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in relying upon the partial partition agreement dated April 1, 1971, which, according to the Appellate Assistant Commissioner, is invalid and holding that by virtue of the agreement dated April 1, 1971, an overriding title in favour of the wife and minor sons of the assessee in respect of the share income from Nagesh Engg. Works was created and, subsequently, the assessee was assessable only in respect of 1/4th of the share income from the said firm ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the entire share income of the assessee from Nagesh Engineering Works was not assessable at one place as income of the entire group but at four different places as income belonging to the individual members of the group ?"

3. On account of the fact that in the partition deed of the Hindu undi vided family, overriding title was created in favour of the wife and minor sons, the question of including their share income in the income of the assessee could not arise in view of our decision in Income Tax References Nos. 80 and 81 of 1980 (Commissioner of Income Tax Vs. Narinder Kumar, , decided on November 28, 1988). Learned counsel for the Revenue urged that the aforesaid decision will not apply to the facts of the present case because there is no order of the Income Tax Officer granting partial partition of the Hindu undivided family whereas, in the aforesaid decided case, partial partition had been granted by the Income Tax Officer. It is true that there is no specific order of the Income Tax Officer granting partial partition of the Hindu undivided family but the substance of the order of the Income Tax Officer is that he accepted the partial partition and in recognition thereof came to the conclusion that after partial partition, the members of the Hindu undivided family constituted a sub-partnership and, for that reason, included the share income of the other members of the Hindu undivided family in the income of the erstwhile karta as he was the husband of one member and father of the other two minors. If the Income Tax Officer were not to accept the partial partition of the Hindu undivided family, he could not have assessed the income received from the partnership in the hands of the assessee. In that eventuality, it had to be assessed in the hands of the Hindu undivided family. Under the circumstances, it has to be deemed that the Income Tax Officer accepted the partial partition and once that is so, the argument raised before us on behalf of the Revenue has to be rejected.

4. For the reasons recorded above, we answer both the questions in the affirmative, in favour of the assessee and against the Revenue with costs quantified at Rs. 500.