**(2005) 07 AHC CK 0257**

**In the Allahabad High Court**

**Case No :** Income Tax Reference No. 14 of 1986

Satish Chand Gupta APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 27-07-2005

**Acts Referred:**

Income Tax Act, 1961 — Section 256, 64

**Citation :** (2005) 07 AHC CK 0257

**Hon'ble Judges :** Rajes Kumar, J;R.K. Agrawal, J

**Bench :** Division Bench

# Judgement

1. The Income Tax Appellate Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) relating to the assessment year 1982-83 at the instance of the assessee for opinion to this Court:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that income received by Smt. Uma Rani as her share of profit in the partnership firm M/s. Satya Pal Gupta and Bros. is chargeable in the hands of Shri Satish Chand Gupta, the assessee-appellant, by invoking Section 64(1)(ii) of the Income Tax Act, 1961, despite the fact that the assessee is a partner in the said Firm as karta representing his HUF?

2. The brief facts of the case are as follows:

The assessee had been assessed in the status of resident-individual. The accounting period is claimed to be the financial year. One Smt. Uma Rani was a partner in the firm M/s. Satya Pal Gupta and Bros. Where her husband, the assessee- appellant was also a partner, but the assessee represents his HUF in the said firm, i.e., his partnership is in the representative capacity as karta. By invoking Section 64(1)(ii) of the Income Tax Act, 1961, assessing authority had included the share income of Smt. Uma Rani in the hands of the assessee relying upon the decision of this Court in the case of Madho Prasad Vs. Commissioner of

 

Income Tax, . First Appeal filed by the assessee was dismissed. Tribunal has also dismissed the Second Appeal relying upon the decision of this Court in the case of Madho Prasad (supra) and in the case of Sahu Govind Prasad Vs. Commissioner of Income Tax,

3. Heard Sri Amitabh Agarwal holding brief of Shri P.K. Jain, Advocate and Sri A.N. Mahajan, learned standing counsel

4. We have given our anxious consideration to the submissions made by the learned Counsel for the parties. Section 64(l)(ii) of the Income Tax Act which reads as follows

(i) In computing the total income of any individual, there shall be included all such income as arise directly or indirectly

(it) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;

5. The issue involved in the present case is squarely covered by the decision of Apex court in the case of Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., which has been followed by this Court in the case of Commissioner of Income Tax Vs. Ram Krishna Tekriwal, Apex court has overruled the decision of this Court in the case of Madho Prasad (supra) and in the case of Sahu Govind Prasad (supra).

6. Apex Court held that where a person is a partner in a partnership firm not in his individual capacity but as the karta of the Hindu undivided family, the income accruing to his wife on account of her being a partner in the same partnership firm cannot be included in the total income of such person in an individual assessment or in the assessment of the Hindu undivided family.

7. In view of the foregoing discussions, we answer the question referred to us in negative, i.e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.

 