(1991) 01 AHC CK 0102

In the Allahabad High Court

Case No : Income-tax Reference Application No. 175 of 1990

Subhash Chand (HUF) APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-01-1991

Acts Referred:
Income Tax Act, 1961 — Section 171, 256

Citation : (1991) 191 ITR 454

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.A. Sharma, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Having heard learned counsel for both the parties, we are of the opinion that the following two questions of law do arise from the order of the Tribunal and shall, therefore, be stated u/s 256(2) of the Income Tax Act, 1961 :

"(i) Whether the learned Appellate Tribunal is justified in disallowing the claim of partition as the group does not consist of the head of the branch and his sons, after ignoring the law pronounced by the learned Supreme Court, in the case of Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat,

(ii) Whether the learned Income Tax Appellate Tribunal is justified in taking an adverse inference for rejecting the claim of partition on the ground that the share of each member in a group is not in a definite portion in the partition ?"

2. We may mention that, in his application, the petitioner has asked for referring three questions but, before the Tribunal, in his application u/s 256(1), he had requested only questions Nos. (ii) and (iii) alone to be referred and those are the questions which we have now directed to be referred.

3. What is now styled as question No. (1) in this application was not raised in the application u/s 256(1). Re that as it may, since question No. (ii) brings out the question in controversy, it is not necessary to refer question No. (i).

4. The application is allowed in part. No costs.

