(1967) 01 AHC CK 0003

In the Allahabad High Court

Case No : Income-tax Reference No. 610 of 1963

VISHWANATH APPELLANT

Vs

COMMISSIONER OF Income Tax, U. P. RESPONDENT

Date of Decision : 24-01-1967

Acts Referred:
Income Tax Act, 1922 — Section 66(1)

Citation : (1968) 67 ITR 521

Hon'ble Judges : Jagdish Sahai, J

Bench : Division Bench

Judgement

JAGDISH SAHAI J. - The Income Tax Appellate Tribunal, Allahabad Bench (hereinafter referred to as the Tribunal), has, at the instance of the assessee, submitted a statement of the case and the following question of law u/s 66 (1) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act), for the opinion of this court :

"Whether the share income from a firm could be assessed in the partners hands prior to the completion of the firms assessment ?"

The assessee, Viswanath, is an individual. The dispute relates to the assessment year 1956-57.

The Income Tax Officer completed the assessment on February 14, 1961, including therein the assessees share in the profits of the firm Moti Lal and Sons with the following observation :

"Share from Moti Lal and Sons taken provisionally to be rectified u/s 35 after the share is finally determined."

He overruled the assessees plea that the assessment with regard to the income from the assessees share from the firm Moti Lal and Sons could not be added to the income of the assessee until the assessment of that firm has been completed.

The assessee appealed to the Appellate Assistant Commissioner and then to the

Tribunal but without success. The only change that the Appellate Assistant Commissioner made in the order of the Income Tax Officer was that, in view of the assessment on the firm Moti Lal and Sons having been completed by the time the appeal was heard, the estimated income added by the Income Tax Officer be substituted by the actual income received by the assessee as his share from the firm Moti Lal and Sons.

There is nothing in the Act which prohibits assessment of a partner on the basis of his provisional income from his share in a firm, the assessment of which has not been completed. This view has been taken by the Supreme Court in Commissioner of Income Tax v. Murlidhar Jhawar and Purna Ginning and Pressing Factory and by this court in Hazari Ram Mohan Ram v. Commissioner of Income Tax. We are, therefore, satisfied that the reference must be answered against the assessee. We, therefore, answer the question referred to us in the affirmative against the assessee and in favour of the department. There is no order as to costs.

Question answered in the affirmative.

