

(1991) 01 AHC CK 0052

Allahabad High Court

Case No: Income-tax Reference No. 149 of 1979

Commissioner of Income Tax

APPELLANT

Vs

K.N. Sharma

RESPONDENT

Date of Decision: Jan. 31, 1991

Acts Referred:

- Income Tax Act, 1961 - Section 256(2)

Citation: (1991) 192 ITR 212

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.P. Jeevan Reddy, C.J.

u/s 256(2) of the Income Tax Act, 1961, the following question has been stated by the Income Tax Appellate Tribunal, Delhi Bench "A", New Delhi :

"Whether, on the facts and in the circumstances of the case, the Tribunal, was legally correct in upholding the Appellate Assistant Commissioner's order that only 50 per cent, of the income from the business styled as Messrs, Moradabad Gun House, Moradabad, was to be included in the hands of Shri K.N. Sharma for the assessment years 1967-68 and 1968-69,-even though, in the original return filed for the assessment year 1967-68, the assessee had himself declared the entire income from the said business ?"

2. The assessment years relevant are 1967-68 and 1968-69. It appears that, for the assessment year 1967-68, the assessee, in his return, disclosed the total income derived from the business styled as Messrs. Moradabad Gun House, Moradabad, as his exclusive income but before the assessment was made, he filed a revised return claiming that the said business is carried on by a partnership firm wherein he has 50% share and, therefore, 50% of the income arising from the said business alone should be included in his income. The Income Tax Officer, however, refused to

accede to the said plea and included the entire income from the said business in the individual assessment of the assessee. On appeal, the Appellate Assistant Commissioner allowed the appeal holding that inasmuch registration has been granted to the aforesaid partnership firm, the assessee's share must be only half of the income arising from the said business. This view has been affirmed by the Tribunal, The assessment relating to grant of registration to the firm has become final. Indeed, a reference arising in that behalf (income tax Reference No, 151 of 1979 -- [Commissioner of Income Tax Vs. Moradabad Gun House](#), has been answered by us holding that the order refusing to condone the delay in filing the application for registration of the firm is an appealable order. In this view of the matter, the Tribunal's order is perfectly in order. The question referred is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

3. No costs.