(2003) 05 AHC CK 0232

Allahabad High Court

Case No: IT Reference No. 142 of 1983 6 May 2003

Commissioner of Income Tax		APPELLANT
	Vs	
J.P. Bhatia		RESPONDENT

Date of Decision: May 6, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 256

Citation: (2003) 133 TAXMAN 391

Hon'ble Judges: R.S. Chauhan, J; Ghanshyam Dass, J; Dr. R.S. Chauhan, J

Bench: Full Bench

Advocate: Dhananjay Awasthi, for the Revenue, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

This is reference u/s 256(1) of the Income Tax Act, 1961 wherein following questions have been referred for our opinion:

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in weight to the supplementary deed dated 1-2-1977?

2. Whether the Tribunal was justified in treating the application for registration in Form No. 11 as contemporaneous evidence?"

2. None appears on behalf of the assessee, Heard Shri Dhananjay Awasthi, learned standing counsel for the revenue. In P.R. Chowdhary and S. Gangoli Vs. The State of U.P., , the Apex Court has held that if the assessee-firm came into existence on 1-4-1948, under an oral agreement, and an intimation was given to the bank on 15-4-1949, as there was no evidence of creation of partnership firm in the previous, the assessee was not eligible for registration for assessment year 1949-50.

3. Thus it was held that unless the partnership firm had carried business in accordance with terms of an instrument of partnership which was operative during the accounting year. It cannot claim the benefit of registration as it could not be registered in respect of the following assessment year.

4. In the instant case Commissioner has set aside the order registration dated 2-9-1977 for assessment year 1976-77 on the ground that there was no evidence as when the firm came into existence prior to assessment year 1975-76. More so return filed on behalf of the firm stood superseded by the return filed by Sri J.P. Bhatia in the individual capacity.

5. In view of the above we answer both the questions in negative i.e. in favour of the revenue and against the assessee.