

**(2003) 05 AHC CK 0243**

**Allahabad High Court**

**Case No:** IT Reference No. 267 of 1983 14 May 2003

Commissioner of Income Tax

APPELLANT

Vs

Shyamlal

RESPONDENT

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**Date of Decision:** May 14, 2003

**Citation:** (2003) 132 TAXMAN 890

**Hon'ble Judges:** Sudir Narain, J; D.P. Gupta, J

**Bench:** Full Bench

**Advocate:** A.N. Mahajan, for the Revenue, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

Heard Sri A.N. Mahajan, learned counsel for the Applicant.

2. The following questions have been referred to this court by the Tribunal :

"1. Whether, on the facts and circumstances of the case, the Tribunal was legally correct in holding that the share income from the firm M/s. Gordhan Dass Mahender Kumar should not be computed in the hands of the assessee ?

2. Whether, on the facts and circumstances of the case, the Tribunal was legally correct in observing that the share income from M/s. Sisona Gur and Khandsari Udyog in the names of Shyamlal Surender Kumar and Jitender Kumar, Smt. Vidya Devi cannot be considered as income in the hands of the assessee ?

3. Whether, on the facts and circumstances of the case, the Tribunal was legally correct in holding that the interest income from the firm M/s. Gordhandas Mahender Kumar in the name of Shyamlal Surender Kumar and in the name of Jitender Kumar Vidya Devi cannot be included in the hands of the assessee ?"

3. The assessee is a Hindu Undivided Family and it consists of its karta Shri Shyamlal, his wife Smt. Vidya Devi and his two sons, Surender Kumar and Jitender Kumar. In the assessment year 1977-78 the Income Tax Officer included the share income

from the firm M/s. Gordhandass Mohinder Kumar, Muzaffarnagar, amounting to Rs. 42,447 the share income from the firm M/s. Sisona Gur and Khandsari Udyogin the names of Shyamlal, Surender Kumar, Jitender Kumar, Vidya Devi amounting to Rs. 20,552 and Rs. 20,553 respectively, and the interest income from the firm M/s. Gordhandass Mohinder Kumar amounting to Rs. 1,066 in the name of Shri Shyamlal Surender Kumar and amounting to Rs. 3,795 in the name of Jitender Kumar, Vidya Devi.

4. The assessee preferred an appeal. The Commissioner (Appeals), Meerut, deleted the addition and accepted the partial partition.

5. The department preferred an appeal before the Appellate Tribunal and the Tribunal dismissed the appeal.

6. The basic question in these matters is whether partial partition was valid. The partial partition shall be taken to be valid even if the share of each member of each group of the family has not been defined, as held in the CIT v. Shyam Lal 2001 UPTC 777.

7. In view of the aforesaid decision, the questions referred to above are decided in the affirmative and against the Commissioner.

8. The reference application is, accordingly, disposed of finally.

The parties shall bear their own costs.