

**(2005) 01 AHC CK 0194**

**Allahabad High Court**

**Case No:** IT Reference No. 171 of 1991 31 January 2005

Commissioner of Income Tax,  
Meerut

APPELLANT

Vs

Sewa Ram and Sons

RESPONDENT

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**Date of Decision:** Jan. 31, 2005

**Acts Referred:**

- Income Tax Act, 1961 - Section 171, 256

**Citation:** (2006) 154 TAXMAN 280

**Hon'ble Judges:** R.K. Agrawal, J; Prakash Krishna, J

**Bench:** Full Bench

**Advocate:** Shambhoo Chopra, for the Appellant;

**Final Decision:** Disposed Of

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, New Delhi, has referred the following question to law u/s 256(l) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in directing the assessing officer to decide the assessee's plea of partial partition on merit afresh by ignoring the provisions of section 171(9) of the Income Tax Act, 1961?"

The reference relates to the assessment years 1980-81 and 1981-82.

2. Briefly stated the facts giving rise to the present reference are as under:

The respondent-assessee is HUF According to the respondents partial partition had taken place in the HUF on 1- 1 - 1980. The Income Tax Officer invoking the provisions of section 171(9) of the Act, for both the assessment years, did not accept

the plea of partial partition as in view of the said provision partial partition effected after 31-12-1978 is not to be recognized for the purposes of the Act. The order was affirmed in appeal by the Appellate Assistant Commissioner. However, feeling aggrieved the respondents preferred further appeal before the Tribunal. The Tribunal relying upon the decision of Madras High Court in the case of [M.V. Valliappan and Others Vs. Income Tax Officer and Others](#), wherein provision of section 171(9) had been declared unconstitutional and void and allowed the appeal by holding that this provision cannot be invoked for negating the claim of partial partition. The Tribunal has accordingly set aside the order on the point and directed the assessing authority to consider and decide the plea of partial partition in respect of both assessment years after giving opportunity of hearing to the respondent-assessee by ignoring the provisions of section 171(9) of the Act.

3. Heard Sri Shambhoo Chopra, learned standing counsel for the revenue and perused the record. Nobody appears for the respondent-assessee.

4. We find that Apex Court in the case of [Union of India and Others Vs. M.V. Valliappan and Others](#), has reversed the judgment of Madras High Court and held the provision of section 171(9) to be valid and within the competence of the Parliament to enact such provision. In view of the aforesaid decision, the question of considering the claim of partial partition ignoring the provision of section 171(9) of the Act does not arise. The Tribunal has clearly committed an error in directing the assessing authority to reconsider the claim of partial partition ignoring the provision of section 171(9) of the Act.

5. In view of foregoing discussion we answer the question referred to us in negative, i.e., in favour of the revenue and against the assessee. There shall be, however, no order as to costs.