

(2005) 02 AHC CK 0259

Allahabad High Court

Case No: IT Reference No. 81 of 1992 14 February 2005

Commissioner of Income Tax,
Meerut

APPELLANT

Vs

Amrit Lal

RESPONDENT

Date of Decision: Feb. 14, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 256

Citation: (2007) 295 ITR 505 : (2006) 154 TAXMAN 316

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

Bench: Full Bench

Advocate: A.N. Mahajan and P.K. Jain,, for the appearing parties;

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, New Delhi, has referred following question of law u/s 256(1) 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 ITAT was correct in law to hold that the share income of Rs. 8,845 received from M/s. Amrit Lal Subhas Chand is not includible in the assessee's income liable to tax although the issue with regard to the correct status to be adopted in the cases of sub-groups formed on partial partition of bigger HUFs is subjudice before the Hon"ble High Court, Allahabad ?"

2. Briefly stated the facts involved in the present case are as under:-

The present reference relates to the assessment years 1985-86 and 1984-85. A bigger HUF in the name of Kewal Krishna existed comprising of father and three sons as coparceners. A partial partition of the capital of Rs. 10,000 was made to

effect on 31-3-1975. On the basis of this partial partition, Kewal Krishna, Yogesh Chander formed one group and Rakesh Goel, Rajesh Goel formed another group. Each of these groups has a capital of Rs. 5,000 each consequent to the partition. It was followed by a second partial partition of an immovable property on 31-10-1976. As per this partition two groups were again formed, one comprising of Kewalkrishna, Rajesh Kumar and another Yogesh Chander and Rajesh Kumar. The partial partition claims were accepted by the Income Tax Officer but he treated the groups as tenants in common and 50 per cent of the income arising from the assets partition were included in the hands of the income of the assessee rejecting the claim of the income representing that of this smaller HUF. The Tribunal has upheld the claim of the partial partition accepted by the Deputy Commissioner (Appeals).

3. We have heard Sri A.N. Mahajan, learned standing counsel for the revenue. Shri P.K. Jain has filed his appearance on behalf of the respondent-assessee. We find that this court in the case of [Commissioner of Income Tax Vs. Shrawan Kumar Swarup and Sons](#), has in similar circumstances upheld the claim of partial partition between various groups.

4. We accordingly answer the question referred to us in affirmative, i.e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.