
Commissioner of Income Tax Vs Sitaram Agarwalla and Bros.

Income-tax Appeal No. 345 of 1982

Court: Calcutta High Court

Date of Decision: Jan. 10, 1989

Acts Referred:

Income Tax Act, 1961 "Section 185, 256

Citation: (1989) 80 CTR 7 : (1990) 186 ITR 385 : (1989) 45 TAXMAN 206

Hon'ble Judges: Suhas Chandra Sen, J; Baboo Lall Jain, J

Bench: Division Bench

Advocate: ;Roychoudhury, for the Respondent

Judgement

Suhas Chandra Sen, J.

Three questions have been referred u/s 256(2) of the Income Tax Act, 1961 ("the Act"), by the Tribunal to this

court. The questions are :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal had any evidence to hold that the share of the deceased father in the

main partnership firm devolved on his sons in equal shares by succession ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal had any evidence to hold that the share of the deceased father in the

main partnership firm was not the property of the joint Mitakshara family of the sons and the son who became the partner on the death of the father

did not do so in a representative capacity only ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that there was a genuine sub-partnership which

was entitled to registration ?

2. It was contended by Mr. Roychoudhury on behalf of the assessee that the first two questions do not arise out of the order of the Tribunal.

Having read the order of the Tribunal, I am of the view that this contention must be upheld. No question was raised before the Tribunal as to the

devolution of the father's interest in the partnership firm on the sons by succession. The question in regard to the effect of the devolution of the

property in the case of the joint Mitakshara family was not raised nor considered by the Tribunal.

3. The only question that calls for determination is whether the Tribunal was correct in holding that there was a genuine sub-partnership which was

entitled to registration. The facts as stated by the Tribunal are that the six partners of the assessee-firm are the sons of Sri Benarasilal Kedia who

was a partner of the firm of East India Metal Syndicate till his death in 1960. Benarasilal had one-sixth share in East India Metal Syndicate. He

died intestate on August 20, 1960, leaving behind his widow, six sons and two daughters. Shri Sitaram Agarwalla, one of the six sons, joined the

said firm as a partner in place of his father with one-sixth share in the firm. Sitaram was assessed on the income arising out of the said share for the

years 1960-64. On July 27, 1964, the six sons of the late Benarasilal Kedia including Sitaram Agarwalla entered into a sub-partnership to share

the profit or loss of the one-sixth share of the firm of which Sitaram Agarwalla was a member. The assessee came into existence in this manner.

The application for registration of the firm u/s 185 of the Act was refused by the Income Tax Officer on the ground that no genuine partnership had

come into being. The Tribunal, following the principle laid down in the case of *Fatehchand Murlidhar and Another Vs. Commissioner of Income*

Tax, Calcutta, hold that the concept of a sub-partnership had been recognised in India and registration should be accorded to such sub-

partnership under the Act. The Tribunal further held that this view was also accepted by the Punjab and Haryana High Court in the case of

Commissioner of Income Tax Vs. R.B. Jodha Mal Kuthiala and Co., .

4. The Tribunal merely followed the principles of law laid down by the Supreme Court. Therefore, we answer the questions in the following way.

5. Questions Nos. 1 and 2 do not arise out of the order of the Tribunal and we decline to answer the same. Question No. 3 is answered in the

affirmative and in favour of the assessee.

6. There will be no order as to costs.

Baboo Lall Jain, J.

7. I agree.