

(1925) 05 CAL CK 0052

Calcutta High Court

Case No: None

Harisingh Santokchand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: May 25, 1925

Judgement

Chatterjee, J.

This is a reference u/s 66 (2) of the income tax Act (Act XI of 1922) and the question referred is whether the firm of Harisingh Santokchand should be assessed as an unregistered firm or as a joint Hindu family business. If it is the latter they would be entitled to a deduction for the purpose of assessing the super-tax to the extent of the first twenty-five thousand rupees. The facts are stated by the Commissioner of income tax. It appears that in 1920-21 and 1921-22 when the assessees were called upon to state the names and addresses of the partners of the firm, it was stated that the partners of the firm were Balchand and Santokchand, and the munim of the firm declared that those two persons were the proprietors of the firm. The statements of accounts showed that the profits of the business were distributed among the partners not equally but in the proportion, Balchand Malchand 6 annas share, Santokchand 10 annas share. It appears therefore that there was separate enjoyment of the income, and separate appropriation of the profits of the business by the two partners Balchand and Santokchand according to the separate shares of each which were unequal. On these facts it cannot be held that it was a Hindu joint undivided family so as to attract the provisions of 2(a)(i), Part II of Schedule III of the Indian Finance Act, 1924.

2. The firm should accordingly be assessed as an unregistered firm and not as a Hindu undivided family business.

3. The petitioners must pay the costs, the hearing fee being assessed at ten gold mohurs.

Ghose, J.

I agree.

Cuming, J.

I agree.