

In Re Pt. Shyam Sunder.

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Court : Allahabad

Decided On : Feb-16-1960

Reported in : [1961]41ITR807(All)

Appeal No. : I. T. Miscellaneous Case No. 317 of 1953

Appellant : In Re Pt. Shyam Sunder.

Judgement :

By this application under section 66 (2) of the Income-tax Act the assessee has requested this court to call for a statement of the case from the Income-tax Appellate Tribunal in respect of questions of law arising from the addition to the assessable income of the assessee of a certain amount received by his two minor sons from a partnership firm to the benefits of which they were admitted as partners. The Income-tax Appellate Tribunal held that in the two earlier years of assessment 1945-46 and 1946-47 it had been held that the money for the investment by the minor sons of the assessee in the partnership firm had been provided out of the income of the assessee himself. Thereafter the Tribunal remarked that that finding recorded in the two earlier years had become final and no further evidence had been led to displace it. A grievance is made before us by learned counsel for the assessee that in fact no opportunity was afforded to the assessee to give evidence or provide materials to displace that finding which could at best be admitted only as evidence and not as res judicata. In the application under section 66 (1) of the Income-tax Act also the assessee had raised a similar ground. The Tribunal does not appear to have stated at any stage that in these

assessment proceedings at any stage the assessee was given an opportunity to displace the earlier findings. In these circumstances it appears to us that a question of law does arise in this case as to whether the order of the Income-tax Appellate Tribunal dismissing the appeal of the assessee is vitiated by the fact that the assessee had not been given any opportunity in these assessment proceedings or in appeals arising therefrom to show that the money received from the partnership firm to the benefits of which partnership the minor sons of the assessee were admitted belonged to the minor sons of the assessee were admitted belonged to the minors and not to the assessee. We consequently direct the Income-tax Appellate Tribunal to frame an appropriate question of law and state the case with reference to it. The assessee will be entitled to his costs of this application which we fix at Rs. 100.

Petition allowed.

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