

Cit Vs. J.P. Bhatia

Cit Vs. J.P. Bhatia

SooperKanoon Citation : sooperkanoon.com/492425

Court : Allahabad

Decided On : May-06-2003

Reported in : [2003]133TAXMAN391(All)

Appeal No. : IT Reference No. 142 of 1983 6 May 2003

Appellant : Cit

Respondent : J.P. Bhatia

Advocate for Pet/Ap. : Dhananjay Awasthi, *for the Revenue*

Judgement :

ORDER

This is reference under section 256(1) of the Income Tax Act, 1961 wherein following questions have been referred for our opinion:

'1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in weight to the supplementary deed dated 1-2-1977?

2. Whether the Tribunal was justified in treating the application for registration in Form No. 11 as contemporaneous evidence?'

2. None appears on behalf of the assessee, Heard Shri Dhananjay Awasthi, learned standing counsel for the revenue. In R. C. Mitter & Sons v. CIT :

[1959]36ITR194(SC) , the Apex Court has held that if the assessee-firm came into existence on 1-4-1948, under an oral agreement, and an intimation was given to the bank on 15-4-1949, as there was no evidence of creation of partnership firm in the previous, the assessee was not eligible for registration for assessment year 1949-50.

3. Thus it was held that unless the partnership firm had carried business in accordance with terms of an instrument of partnership which was operative during the accounting year. It cannot claim the benefit of registration as it could not be registered in respect of the following assessment year.

4. In the instant case Commissioner has set aside the order registration dated 2-9-1977 for assessment year 1976-77 on the ground that there was no evidence as when the firm came into existence prior to assessment year 1975-76. More so return filed on behalf of the firm stood superseded by the return filed by Sri J.P. Bhatia in the individual capacity.

5. In view of the above we answer both the questions in negative i.e. in favour of the revenue and against the assessee.