

Cit Vs. Hari Krishan Gupta

Cit Vs. Hari Krishan Gupta

SooperKanoon Citation : sooperkanoon.com/707596

Court : Delhi

Decided On : Nov-27-2000

Reported in : [2001]117TAXMAN214(Delhi)

Appeal No. : IT Ref. Nos. 197, 200 & 201 of 1997 27 November 2000

Appellant : Cit

Respondent : Hari Krishan Gupta

Advocate for Pet/Ap. : R.D. Jolly; and Ajay Jha, for the Revenu; C.S. Aggarwal; and Prakash Kumar, for the Assesse

Judgement :

Arijit Pasayat, C.J.

Our judgment will govern all the three ITRs.

2. For the assessment year 1968-69, the following questions have been referred for opinion of this court by the Tribunal, Delhi Bench A, under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the firm-Victor Cable Corporation could create a goodwill in its books of business on 18-6-1966 and evaluate the same at Rs. 4 lakhs ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that each partner of the firm could be given credit of 1/5th share in the amount of that goodwill in the firms books ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts of goodwill and the capital investments of the partners in the said firm could be in printed with the character of the respective Hindu Undivided Families by throwing them into the family hotchpotches ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts of goodwill and the capital investments of the partners in the said firm were capable of partial partitions amongst the respective families of the partners ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there were valued sub-partnerships between the respective partners and some of their family members and on that score the share incomes of the partners were liable to corresponding deductions ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing deductions from the respective shares of the partners from that firm of the interest amounts paid to their family members, resultant from the said partitions ?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no enquiries about partial partitions in the cases of Brij Krishan, Gopal Krishan and Hari Krishan were necessary ?

8. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that an enquiry under section 171 by the Income Tax Officer was necessary in the case of Chander Krishan ?'

3. So far as the first two questions are concerned, they stand concluded by a decision of this court in Avtar Krishan Gupta v. CIT : [1995]214ITR352(Delhi) . So far as question No. 7 is concerned, it is to be noted that Brij Krishan, Gopal Krishan and Hari Krishan were assessed as individuals before they made claim to

have impressed their respective shares in the partnership with the character of their respective Hindu Undivided Families with effect from 18-6-1966. The basic requirement for bringing in application of section 171 of the Act is that the Hindu Undivided Families must have been assessed hitherto. Undisputedly, Brij Krishan, Gopal Krishan and Hari Krishan were being assessed as individuals before being members of the Hindu Undivided Families which came into existence by throwing their shares in the house property with effect from 18-6-1966. That being the position, section 171 had no application. The Tribunal was, therefore, correct in its view that no enquiry was necessary in the case of Brij Krishan, Gopal Krishna and Hari Krishan. therefore, question referred has to be answered in the affirmative, in favor of the assessed and against the revenue.

So far as Chander Krishan is concerned, he was being assessed in the status of an Hindu Undivided Families prior to 1968-69 and the Tribunal was, therefore, justified in holding that inquiry under section 171 was necessary by the Income Tax Officer. therefore, question No. 8 is answered in the affirmative, in favor of the revenue and against the assessee.

In view of the decision in Avtar Krishan Guptas case (supra), it has to be held that other questions were not adjudicated by the Tribunal and they do not arise out of the order of the Tribunal. It is, therefore, not necessary to deal with them.

The references are disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com