



IN THE HIGH COURT OF DELHI

ITR Nos.148,187-188,304 and 305/81

Date of Decision:31.01.2001

Commissioner of Income-tax
Delhi-III

..... Petitioner

Through: Mr.R.C.Pandey,Mr.R.D.Jolly
with Mrs.Prem lata Bansal,
Advocates.

Versus

Shri G.K.Chadha
New Delhi

..... Respondent

Through: Mr.C.S.Aggarwal with Mr.
Salil Aggarwal,Advocates.
Advocates.

AND

Shri G.K.Chadha
New Delhi

..... Petitioner

Through: Mr.C.S.Aggarwal with Mr.
Salil Aggarwal,Advocates.
Advocates.

VERSUS

Commissioner of Income-tax
Delhi-III

..... Respondent

Through: Mr.R.C.Pandey,Mr.R.D.Jolly
with Mrs.Prem lata Bansal,
Advocates.

CORAM:

THE HON'BLE MR. JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE D.K.JAIN

1. Whether reporters of local papers may be
allowed to see the judgment?

2. To be referred to the Reporter or not?

Arijit Pasayat, C.J.(Oral)

Heard.

All these reference applications are



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assessee and the dispute revolves round the allowability of interest to the Hindu Undivided Family (for short the 'HUF') of the assessee. The references have been made under Section 256(1) of the Income-tax Act, 1961 (in short the 'Act'). So far as assessment years 1971-72, 1972-73 (ITR Nos. 187-88/81) and 1973-74 (ITR No. 148/81) are concerned, the revenue is in reference against Tribunal's decision that interest was allowable as expenditure both under Section 36(1)(iii) and Section 37 of the Act. So far as these references are concerned, revenue's stand is that on the death of Shri B.N. Chadha his son, i.e., the assessee could not have constituted an HUF. We find that there was no dispute by the revenue before the Tribunal on the point that w.e.f. 31.12.1969, the capital account standing in the name of G.K. Chadha (HUF) was the property of his HUF. The only ground on which allowance of interest was objected to was the absence of any specific agreement for paying such interest.

2. Though learned counsel for the revenue submitted that on the death of Shri B.N. Chadha, his son could not have constituted an HUF, that is not an acceptable stand because on or before 31.12.1969 an individual could impress his individual property with the characteristic of an HUF by the act of blending. As is fairly well settled, no specific or particular mode of blending is provided for in the statute. That



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of learned counsel for the revenue that there was no existence of any HUF and therefore, the question of paying any interest did not arise. So far as the absence of any agreement is concerned, Tribunal has referred to various factual aspects to conclude that even in the absence of such a specific agreement or contract, demand/payment of interest by the concerned parties could be provided for. These conclusions are factual in nature giving rise to no question of law. Accordingly we decline to answer the questions which have been referred at the instance of revenue. So far as assessment year 1974-75 (ITR No.305/81) is concerned, revenue had also sought for reference on identical question of allowability of interest. In view of our conclusions for the earlier three years, the question referred is not answered. So far as assessee's reference (ITR No.304/81) is concerned, it relates to the rate of interest. What would be the appropriate rate of interest is essentially a factual aspect giving rise to no question of law. We, therefore, decline to answer the question which has been referred at the instance of assessee.

All the reference applications are accordingly disposed of.

Chief Justice

D.K.Jain, J.

31st January, 2001