



Sr. No.	Date	Orders
*	*	<p data-bbox="443 248 1347 280">IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p data-bbox="655 344 868 376">ITA 69/2002</p> <p data-bbox="443 443 1442 539">           COMMISSIONER OF INCOME TAX ..... Appellant            Through Mr.Sanjiv Khanna            with Ms.Rashmi Chopra, Advocates         </p> <p data-bbox="826 577 943 609">versus</p> <p data-bbox="443 640 1465 736">           BRIG. KAPIL MOHAN ..... Respondent            Through Mr.Anoop Sharma with            Mr.R.K.Raghavan, Advocates         </p> <p data-bbox="443 801 1118 898">           CORAM:            HON'BLE MR. JUSTICE D.K. JAIN            HON'BLE MS. JUSTICE SHARDA AGGARWAL         </p> <p data-bbox="826 965 1018 1061" style="text-align: center;">           O R D E R            -----            06.08.2002         </p> <p data-bbox="443 1155 1501 1576">           This appeal under Section 260-A of the            Income-tax Act, 1961, directed against the order dated            20 October 2000, passed by the Income-tax Appellate            Tribunal Delhi Bench-C, New Delhi (for short 'the            Tribunal') in ITA No.4945/Del/1994, pertaining to the            assessment year 1991/92, proposes the following            questions, stated to be one of law:         </p> <ol data-bbox="576 1637 1465 1989" style="list-style-type: none"> <li data-bbox="576 1637 1465 1832">1. "Whether the ITAT was right in law in holding that the dividend income from 63,676 shares from Mohan Meakins Limited cannot be included in the income of the assessee in view of Section 64(2) of the Income Tax Act, 1961 ?</li> <li data-bbox="576 1861 1465 1989">2. Whether the ITAT was right in holding that dividend income of 63676 shares of M/s.Mohan Meakins Ltd. cannot be taxed            ...contd/-</li> </ol>

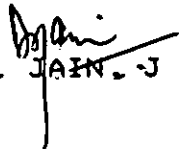

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## H.C.D.--I(a) Continuation Sheet

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		<p style="text-align: center;">: 2 :</p> <p>in the hands of the assessee as he is a sole male member and coparcener in the alleged smaller HUF consisting of the assessee, his wife and minor daughter ?</p> <p>3. Whether the ITAT was right in holding that dividend income from 60000 shares of M/s.Mohan Meakins Ltd. is income of a trust created by the assessee in favour of the first son of Sh.Rakesh Mohan who was not born at the time of the creation of the trust and whether such a trust is a valid trust ?</p> <p>4. Whether the income of the 60000 shares transferred by the assessee in favour of the alleged trust of unborn person is legal and valid and dividend income from the said 60000 shares cannot be included in the income of the assessee?</p> <p>Insofar as proposed questions No. 1 &amp; 2 are concerned, we find that in the case of the assessee, the same issue had come up for consideration of this Court in <u>Commissioner of Wealth Tax/Income Tax v. Lt.Col.Kapil Mohan</u>, reported as (2001) 251 ITR 386, and vide judgment dated 30 May 2001, the matter pertaining to various assessment years were remanded back to the Tribunal with a direction to re-hear the appeal and take decision on the factual aspects, keeping in view the legal position as was indicated in the said judgment. We are of the view that instead of admitting this appeal, it would be appropriate to set aside the impugned order with a direction to the Tribunal to re-hear the appeal and take a fresh decision in the light of the aforementioned judgment. We order</p> <p style="text-align: right;">...contd/-</p>



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		<p style="text-align: center;">: 3 :</p> <p>accordingly. It goes without saying that while hearing the appeal afresh, the Tribunal will take into consideration the provisions of law, which would be applicable for the relevant assessment year, as we find that the Section in question has undergone amendments a number of times.</p> <p>As regards proposed questions No.3 &amp; 4 are concerned the issue, subject-matter of the said questions, stands concluded by a decision of this Court in <u>Commissioner of Income-tax v. Brig.Kapil Mohan</u>, (2001) 252 ITR 830. In view of the said judgment, no fault can be found with the view taken by the Tribunal.</p> <p>The appeal stands disposed of in the above terms.</p> <p style="text-align: right;">   D.K. JAIN, J </p> <p style="text-align: right;">   SHARDA AGGARWAL, J </p> <p>AUGUST 06, 2002 "v"</p>