

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



Sr. No.	Date	Orders
		<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 & 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 matters 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: right;">9</p> <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 & 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> <div style="text-align: right; margin-right: 100px;"> <p><i>D.K. Jain</i> D.K. JAIN, J.</p> <p><i>Sharda Aggarwal</i> SHARDA AGGARWAL, J</p> </div> <p>AUGUST 06, 2002 "V"</p>