

## Commissioner Of Income-Tax, Bihar vs Durgabati And Anr. on 24 January, 1961

**Equivalent citations:** [1961]43ITR228(SC)

**Bench:** J.C. Shah, J.L. Kapur, M. Hidayatullah

### JUDGMENT

Kapur, J.

1. The Commissioner of Income-tax, Bihar, has brought this appeal on a certificate of the High Court of Patna against the judgment and order of that court in which the main question which will be presently set out was decided against the appellant. The facts of this appeal are that two ladies Smt. Durgabati and Smt. Narmadabala Gupta were carrying on coal mining business as co-owners up to the assessment year 1942-43. On April 21, 1943, the two ladies entered into a deed of partnership, one of the terms of which was, that the death of any one of the partners will not dissolve the partnership and that on such an event happening the sons and grandsons of the deceased partner would automatically become partners and the partnership would be deemed to be continued and would continue. Durgabati died on May 27, 1943, leaving and will by which she bequeathed her share in the business to her minor sons Dina Nath Agarwala and Basudeo Prasad Agarwala in equal shares. For the assessment year 1944-45 an application was made under section 26A of the Income-tax Act hereinafter termed as the "Act" for registration of the firm. The application was on behalf of Smt. Narmadabala Gupta, 8as. share, Dina Nath Agarwala and Basudeo Prasad Agarwala, 4as. share each. This application was allowed. For the following two years another application was made but it was rejected by the Income-tax Officer and on appeal it was granted and the firm was registered for that year and also for the assessment year 1946-47 and assessment was made on the partnership from under section 23(5) of the Act, (sic.) Sometime in 1951 the Commissioner of Income-tax acting under section 33B of the Act cancelled the registration for all the three years and directed the Income-tax Officer to determine the tax on the basis that no registration had been granted to the firm. An appeal was taken to the Appellate Tribunal which was dismissed. Four questions of law were submitted for the opinion of the High Court which were as follows :

"I. Whether the Commissioner of Income-tax could revise under section 33B the order passed by the Income-tax Officer on September 24, 1949, in respect of the assessment year 1947-48 ?

2. Whether Smt. Narmadabala Gupta, Dina Nath Agarwala and Basudeo Prasad Agarwala constituted a firm for the purposes of section 26A of the Act ?

3. Whether the individual shares of Dina Nath Agarwala and Basudeo Prasad Agarwala could be held to have been specified in the deed, dated April 21, 1943 ?

4. Whether in the facts and the circumstances of the case the order passed by the Commissioner of Income-tax cancelling the orders of the Income-tax Officer granting registration of the firm and directing the Income-tax Officer to determine the tax payable by the firm on the basis that no registration had been granted to the firm, were valid in law ?"

2. The reference was heard by Ramaswami and Misra JJ. The first question was not pressed and was decided against the assessee. The second question was also decided against the assessee on merits. The third was held to be academic in view of the decision on the first two questions. Question No. 4 alone was argued and there was difference of opinion between the learned judges constituting the Bench. Ramaswami J., was of the opinion that it should be answered against the assessee but Misra J., was of the contrary opinion. That matter was therefore heard by S. K. Das C.J. (as he then was) and he agreed with Misra J. and the question was decided in favour of the assessee, i.e., the respondent, and against that judgment and order this appeal has been brought by the Commissioner of Income-tax on certificate of the High Court and the only question that survives for decision therefore is the fourth question, the decision on which was against the appellant.

3. The judgment of the majority was based on the decision of Commissioner of Income-tax v. Amritlal Bhogilal & Co., which on appeal to this court was reversed and is reported as Commissioner of Income-tax v. Amritlal Bhogilal & Co. In view of that decision the appeal of the Commissioner of Income-tax must be allowed and the judgment and order of the High Court set aside. In view of the circumstances of this case there will be no order as to costs.

4. Appeal allowed.