

## **Bijadhar Ram Dwarka Ram Ballia, In Re. vs Unknown on 19 November, 1952**

### **Equivalent citations: [1953]23ITR343(ALL)**

#### **JUDGMENT**

MALIK, C.J. - This is a reference under Section 66(I) of the Indian Income-tax Act by which the Appellate Tribunal has referred to us the following question for our decision :-

"Whether there is any change in the person carrying on the business within the meaning of Section 8(I) of the Excess Profits Tax Act, 1940, when the business which was previously carried on and owned by a Hindu undivided family is on partial partition of the family carried on and owned by a partnership composed of the members of the quondam family in contractual relationship ?"

The facts need only be briefly stated. There was a joint Hindu family consisting of three brothers, Radha Kishan, Kamta Prasad, Laxmi Prasad and their nephew, Gopalji. On the 2nd of April, 1943, the joint Hindu family partitioned the business between the members thereof and from the 3rd of April the business was carried on by them as partners. This partnership was registered under Section 26A of the Indian Income-tax Act and was thereafter assessed as a partnership firm. The firm, however, claimed that the deficiency made in the profits in certain years previous to the 3rd of April, 1943, when the business was being carried on by the joint Hindu family, should be allowed to be adjusted against the profits made after the 3rd of April, 1943, when the business was being carried on by the partnership. The Excess Profits Tax Officer disallowed this contention and held that, in view of the provisions of Section 8(I) of the Excess Profits Tax Act, since the 3rd of April, 1943, it was a new business. This decision was upheld by the Tribunal and on an application made by the assessee the question quoted above has been referred to us for opinion.

The point, however, is directly covered by our decision in Miscellaneous Civil Case No. 127 of 1949 - In re Seth Bishan Chand of Shah Jahanpur decided on September 2, 1952. We have heard learned counsel but we see no reason to change the opinion expressed by us in that case.

Our answer to the question, therefore, is in the affirmative.

The assessee must pay the costs which we assess at Rs. 300.

Reference answered accordingly.