

SUPREME COURT OF INDIA

Moti Trust Kota

Vs.

Commr. of Income Tax, Jaipur

(B Kirpal and S Kurdukar JJ.)

22.01.1998

ORDER

1. The Income-tax Tribunal in respect of the assessment years 1976-77 and 1977-78 had referred three questions of law to the High Court for its opinion. The main controversy before the High Court was with regard to the applicability of Section 161 or 164 of the Income-tax Act, 1961, with regard to the assessment of the profits. The question was whether on the distribution of the profits amongst the beneficiaries the assessment was to be made under Section 161 or whether the trust was to be assessed under Section 164 as an association of persons for the reason that it was a discretionary trust.

2. We have heard learned counsel for the parties and we find that even if the trust in question is regarded as a discretionary trust inasmuch as the profits have during the relevant assessment years been credited to the respective accounts of the beneficiaries, therefore, in view of the decision of this court in CIT v. Kamalini Khatau , it is the beneficiaries in whose hands the income will be assessed. That being so, the appeals are allowed and the questions of law referred by the Tribunal have to be answered in favour of the assessee. There will be no order as to costs.