(1988) 05 RAJ CK 0043

In the Rajasthan High Court

Case No : .W.T. Ref. No. 76 of 1988

C. W. T. APPELLANT

Vs

RAM MOHAN RAWAT (HUF). RESPONDENT

Date of Decision : 24-05-1988

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3), 5(1)(xxxii)

Citation : (1988) 71 CTR 182

Judgement

By the Court

This is an application under s. 27(3) of the WT Act by the CWT for a direction to the Tribunal to state the case and refer certain questions of law said to arise out of the Tribunals order to this Court for its decision.

The relevant assessment year is 1976-77.

2. The questions relate to the applicability of r. 28(2) of the WT Rules; and exemption claimed by the assessee under s. 5(1) (xxxii) of the WT Act. The Tribunal has declined to refer for both these questions under s. 27(1) of the Act. Hence, this application under s. 27(3) of the Act.

3. In our opinion, questions of law do arise with regard to the applicability of r. 28(2) of WT Rules as well as the exemption under s. 5(1)(xxxii) of the WT Act. The question of applicability of r. 28(2) arises, where determination of the market value of the closing stock is at an amount exceeding by more than 20 percent the value disclosed in the balance sheet. The dispute between the parties is with regard to the onus of proving the market value of the closing stock at an amount which results in attracting r. 28(2). The question of onus of proof requires construction of a provisions of law. Similarly, the question of exemption under s. 5(1)(xxxii) of the WT Act, 1957 requires construction of a statutory provision read alongwith the Explanation to s. 5(1)(xxxi). Accordingly, a question of law arises in this behalf as well.

4. Consequently, this application is allowed and the Tribunal is directed under s.

27(3) of the Act to state the case and to refer to this Court for its decision the following question of law, namely :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the onus of proof that the market value of the closing stock exceeded by more than 20 percent the value disclosed in the balance sheet of the firm was on the revenue, and the same not having been proved, r. 28(2) of the WT Rules was not attracted ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessees interest in the firm is exempt under s. 5(1)(xxxii) read with Explanation to s. 5(1)(xxxi) of the WT Act, 1957 ?

We direct accordingly.

No costs.

