(1999) 11 AHC CK 0019

In the Allahabad High Court

Case No : Wealth Tax Reference No. 198 of 1981 2 November 1999 A.Y. 1973-74 to 1975-76

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

ANIL KUMAR — RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Citation : (2001) 246 ITR 38

Hon'ble Judges : S.K. Jain, J;M.C. Agarwal, J

Bench : Full Bench

Advocate : Shanibhoo Chopra, for the Revenue and P. K. Mishra, for Bharat Ji Agarwal, for the Assessee, for the Appellant;

Judgement

The Income Tax Appellate Tribunal, Bench-Delhi, in compliance with this court''s direction dated 17-7-1980, u/s 27(3) of the Wealth Tax Act, 1957, in Wealth-tax Applications Nos. 47, 46 and 48 of 1980 has referred the following questions for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the assessee''s share in the additions made in the case of the firm in which he was a partner was not includible in his wealth ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the assessee was entitled to exemption u/s 5(1)(iv) of the Wealth tax Act, 1957, in respect of his share in Saraswati Ware Housing Corporation ?"

The aforesaid questions arise out of a consolidated order dated 7-3-1979, passed by the Tribunal in Wealth-tax Appeals Nos. 1056, 1057 and 1058 (Delhi of 1976-77), for the assessment years 1973-74, 1974-75 and 1975-76.

We have heard Sri Shambhoo Chopra, learned counsel for the Commissioner, and

Sri P. K. Mishra, advocate, holding brief for Bharat Ji Agarwal, learned counsel for the respondent.

2. Admittedly, the additions that were made in the case of the firm were not in respect of any tangible asset and were intangible additions. Under the Wealth Tax Act, what is assessable as the wealth of an assessee is the value of the asset actually owned by him on the valuation date. The Tribunal''s finding is that the additions made in the case of the firm were not represented by any assets that could be included in the net wealth of the assessee. Therefore, the Tribunal was right in holding that the amount of additions made in the case of the firm could not be included in the net wealth of the assessee. We, therefore, answer the aforesaid question in the affirmative, i.e., in favour of the assessee and against the Commissioner.

3. As regards question No. 2, the contention of the Commissioner is that the assessee was not entitled to exemption u/s 5(1)(iv) of the Wealth Tax Act in respect of the share in Saraswati Ware Housing Corporation. The said Saraswati Ware Housing Corporation was not a legal person that could own the property in its own right. The Tribunal found that the assessee was a co-owner of the property and was, therefore, entitled to the exemption u/s 5(1)(iv). The Tribunal''s view now stands affirmed by the Supreme Court in Commissioner of Wealth Tax, T.N.-III, Madras Vs. T.S. Sundaram, Madras, . Although that is a case of partnership firm, the principles laid down by the Supreme Court is equally applicable to other persons who own the property as co-sharer. Therefore, the said question No. 2 is also answered in the affirmative, i. e., in favour of the assessee and against the Commissioner.

