(2004) 08 AHC CK 0268

In the Allahabad High Court

Case No : Income-tax Reference Case No. 187 of 1984

Commissioner of Income Tax APPELLANT

Vs

Smt. Urmila Devi RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Citation : (2005) 195 CTR 383 : (2005) 273 ITR 503

Hon'ble Judges : R.K. Agarwal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; R.S. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following question of law u/s 27(1) of the Wealth-tax Act, 1957, hereinafter referred to as "the Act" for the opinion to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee would be entitled to deduction of Rs. 1,00,000 u/s 5(1)(iv) against the value of her share in M/s. Amarpali Cinema in which she was a partner ?"

2. The respondent-assessee is a resident-individual. The assessment years involved are 1974-75, 1975-76 and 1976-77 with respective valuation dates being March 31, 1974, March 31, 1975 and May 31, 1976. At the assessment stage the assessee claimed exemption to the tune of Rs. 1,00,000 in respect of land and building belonging to the firm, M/s. Amarpali Cinema, Meerut, wherein the assessee was a partner having 20 per cent. share in the profits/losses. The exemption was claimed u/s 5(1)(iv) of the Act, but the Assessing Officer negatived the claim with the reasoning that the assessee was not the owner of the land and building since it belonged to the firm. At the first appellate stage the assessee got the desired relief and the matter having been carried to the stage of the Income Tax Appellate Tribunal, the Revenue met failure.

3. We have heard Sri A. N. Mahajan, learned counsel for the Revenue, and Sri R. S. Agarwal, learned counsel appearing for the respondent-assessee.

4. Learned counsel for the Revenue submitted that u/s 5(1)(iv) of the Act exemption is granted to one house or part of a house belonging to the assessee and not to a cinema building as by no stretch of imagination a cinema building can be said to be a house.

5. Sri R. S. Agarwal, learned counsel for the assessee relied upon a decision of this court in the case of CIT v. Vinod Kumar [1999] UPTC 606 and submitted that even cinema building is entitled for exemption u/s 5(1)(iv) of the Act. It may be mentioned here that the exemption u/s 5(1)(iv) of the Act is available to one house or part of a house belonging to the assessee. The house is a place where people live and by no stretch of imagination the cinema building can be said to be a house as nobody lives or inhabits. A Division Bench of this court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, has held that exemption u/s 5(1)(iv) of the Act is not available to a cinema building as it is not a building for human habitation or a dwelling or a home and a cinema hall is not a house at all.

6. We are in respectful agreement with the view taken in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, . So far as the decision relied upon by Sri R. S. Agarwal is concerned, it may be mentioned here that this court had not considered the word "house" used in Section 5(1)(iv) of the Act and had simply held that interest in the immovable property is exempt. In Wealth-tax Reference No. 288 of 1983 Commissioner of Wealth-tax Vs. Smt. Angoori Devi and Others, decided on August 10, 2004), we have held that an assessee is not entitled to exemption u/s 5(1)(iv) of the Act in respect of his/her share in the cinema building.

7. In view of the foregoing discussion, we answer the question of law referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, the parties shall bear their own costs.