(1999) 10 AHC CK 0144

In the Allahabad High Court

Case No : Wealth-tax Reference No. 45 of 1982

Commissioner of Wealth-tax APPELLANT

Vs

Anil Kumar Aggarwal RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:
Wealth Tax Act, 1957 — Section 5, 5(1)

Citation : (2000) 246 ITR 93

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Prakash Krishna, for the Appellant; None, for the Respondent

Final Decision : Disposed Of

Judgement

1. The Income Tax Appellate Tribunal, Delhi Bench-C, has, at the instance of the Commissioner of Wealth-tax, referred u/s 27(1) of the Wealth-tax Act, 1957, the following question, stated to be of law and to arise out of an order dated October 15, 1980, passed by the said Tribunal in Wealth-tax Appeals Nos. 515 and 516 (Delhi) of 1979, for the opinion of this court :

"Whether the Income Tax Appellate Tribunal was legally correct in holding that the assessee was entitled to the deduction u/s 5(1)(iv) of the Wealth-tax Act in respect of his 1/5th share in the association of persons Mahavir Glass Works in respect of the value of immovable ''properties owned by the said association of persons ?"

We have heard Sri Prakash Krishna, learned counsel for the Commissioner. No one appeared on behalf of the assessee-respondent.

2. u/s 5(1)(iv) of the Wealth-tax Act, a house property or part of a house belonging to the assessee was not includible in the net wealth of an assessee. The petitioner along with others owned some immovable property known as "Mahavir Glass Works" which appears to be assessed to Income Tax as an association of persons. The petitioner claimed exemption u/s 5(1)(iv) of the

Wealth-tax Act, 1957, in respect of his share in the said immovable property. The Assessing Officer denied the claim which was accepted by the Appellate Assistant Commissioner of Wealth- tax. The Tribunal on an appeal by the Assessing Officer has upheld the view taken by the Appellate Assistant Commissioner. In doing so, the Tribunal followed a judgment of the Karnataka High Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, . At the instance of the Commissioner of Wealth-tax, the Tribunal has referred the aforesaid question for the opinion of this court.

3. It is admitted that the petitioner is the joint owner of the said property and has a 1/5th share therein. The question whether a co-sharer is entitled to claim the benefit of exemption has been agitated before several other High Courts also and it has been held that a partner in a firm or a co-sharer otherwise is entitled to the exemption. See Commissioner of Wealth Tax Vs. Radha Krishna Jalan, ; Commissioner of Wealth-tax Vs. Smt. Vimlabai Kantilal Porwal, ; Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, . The controversy has now been settled by the Supreme Court in Commissioner of Wealth Tax, T.N.-III, Madras Vs. T.S. Sundaram, Madras, , in which the view taken by the Karnataka High Court in the case of Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, , has been upheld. Therefore, the question stated above has to be answered in the affirmative and is so answered in favour of the assessee and against the Commissioner.

