(2004) 08 AHC CK 0081

In the Allahabad High Court

Case No : Wealth-tax Reference No''s. 119, 120 and 137 of 1985

Commissioner of Wealth-tax — APPELLANT

Vs

Dalpat Singh and Others — RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:
Wealth Tax Act, 1957 — Section 27(1), 5(1)

Citation : (2005) 276 ITR 133

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

Bench : Division Bench

Advocate : A.N. Mahajan and Shambhoo Chopra, for the Appellant; None, for the Respondent

Judgement

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

"1. Whether the Income Tax Appellate Tribunal is legally correct in holding that the assessee was entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act in respect of his share in the value of the immovable properties, which belonged to the firm of which the assessee is a partner ?

2. Whether the Income Tax Appellate Tribunal is legally correct in holding that reversionary value of land cannot be included while valuing the immovable property by capitalizing net annual value ?"

2. Briefly stated the facts giving rise to the present references are as under :

3. The respondent in W. T. R. No. 119 of 1985 is Dalpat Singh, whereas in W. T. R. No. 120 of 1985 the respondent is Ajit Singh and in W. T. R. No. 137 of 1985 the respondent is Abhay Singh. All of them are partners in M/s. Jaswant Picture Palace, Agra, which owns a cinema hall known as Jaswant Cinema and Jaswant Market in King Ki Mandi, Agra. The present references relate to the assessment years 1976-77 to 1978-79. For valuing the properties the Wealth-tax Officer had

referred the question of valuation to the Valuation Officer. The Valuation Officer initially valued the assets including the market at Rs. 21,16,000 as on March 31, 1976. After hearing the assessee, the Valuation Officer valued the property at Rs. 19,59,000. It was on this basis that the interest of the assessee in the firm was worked out. The assessee had also claimed that the value of this property was exempt u/s 5(1)(iv) of the Act. The Wealth-tax Officer refused the exemption on the ground that the interest of the assessee in the property was a movable asset. Regarding the Ajit Market, the Wealth-tax Officer had held that there were several shops and the assessee can get exemption in respect of one shop only.

4. When the matter came before the Appellate Assistant Commissioner, he held that the assessee is entitled to full exemption u/s 5(1)(iv) of the Act and regarding the valuation of the property it was found that the value was adopted on the basis of the capitalization of the net annual letting value. The Appellate Assistant Commissioner directed that the reversionary value of the land cannot be separately added where the property is so valued.

5. In these years, the Appellate Assistant Commissioner and the Tribunal followed the earlier year''s order where the question of addition of reversionary value as well as the question of exemption u/s 5(1)(iv) had been decided in favour of the assessee.

6. We have heard Sri A. N. Mahajan and Sri Shambhoo Chopra, learned counsel for the Revenue. Nobody has put in appearance on behalf of the respondents-assessees.

7. So far as the first question is concerned, it may be mentioned here that u/s 5(1)(iv) of the Act exemption has been provided to one house or part of the house belonging to the assessee. Cinema building and the market cannot by any stretch of imagination be held as a house. This court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, has held that in common parlance a house is a place where people live. Of course a residential building can also be given for commercial purposes yet it will remain a house. However, by no stretch of imagination can a cinema hall be regarded as a house and no one ever calls a cinema hall a house. Similar would be the position with respect of the market.

8. Respectfully following the decision we are of the opinion that the respondents were not entitled for any exemption u/s 5(1)(iv) of the Act in respect of the share in the immovable properties in question.

9. So far as the second question is concerned this court in the case of CWT v. Ram Saran Kajriwal [1987] 168 ITR 485 has held that reversionary value of the land cannot be included while valuing the immovable property by capitalizing the net annual letting value. Thus the reversionary value cannot be included while valuing the immovable property by capitalizing the net annual value.

10. In view of the foregoing discussions, we answer question No. 1 in the negative, i.e., in favour of the Revenue and against the assessee and we answer

the second question in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.

