

(1997) 11 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No's. 1, 2 and 2A of 1987

Commissioner of Wealth-tax

APPELLANT

Vs

Deepak Dumra

RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Wealth Tax Act, 1957 — Section 5, 5(1)

Citation : (1999) 236 ITR 542

Hon'ble Judges : N.K. Agrawal, J;G.C. Garg, J

Bench : Division Bench

Advocate : R.P. Sawhney and S.K. Sharma, for the Appellant; None, for the Respondent

Judgement

N.K. Agrawal, J.—The following common question arising from the three assessee's wealth-tax cases for the assessment year 1978-79 has been referred by the Income Tax Appellate Tribunal (the "Tribunal"), at the instance of the Department u/s 27(1) of the Wealth-tax Act, 1957 (for short, "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to exemption u/s 5(1)(iv) in respect of his share in the land and building owned by the firm styled Greatway in which he is a partner ?"

2. The assesses were partners in a partnership firm. They claimed exemption for their shares in the property of the firm u/s 5(1)(iv) of the Act. The Wealth-tax Officer declined to allow exemption, holding that property belonged to the partnership firm whereas the exemption was available to a house or part of a house belonging to the assessee.

3. The Tribunal took the view that exemption was to be allowed to the assessee in respect of their shares in the property held by the firm and the value of their shares was not to be included in their taxable wealth.

4. A Division Bench of this court had an occasion to examine a similar question in

Commissioner of Wealth-tax Vs. Vipin Kumar, . After examining the question whether the assessee was entitled to the exemption in respect of the property belonging to the firm in which he was a partner, it was observed at page 945 as under :

"According to the principles of English jurisprudence which we have adopted in India for the purpose of determining legal rights, there is no such thing as a firm known to the law. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , it was clearly held by their Lordships of the Supreme Court that since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. In Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , the apex court held that the interest of a partner in a partnership firm belonged to him and would be includible in his "assets" and will have to be taken into account while computing his net wealth. In this view of the matter, the assessee in the present case could be said to be having specific interest in the factory land and the building belonging to the firm and, as such, were entitled to the exemption granted to them by the Tribunal. Moreover, Rule 2 of the Wealth-tax Rules providing for the detailed method of determining the value of the interest of a person in a firm of which he is a partner is a pointer to the fact that in the context of wealth-tax, a partner can claim to have a specific interest in its assets exclusively apart from his interest as a partner in the firm. We have already observed that the property of the firm is, in fact, the property of its partners and, consequently, we cannot accept the contention of the Revenue that since the factory land and the building in the present case belong to the firm, the two assesseees who were partners therein were not entitled to claim any deduction u/s 5(1)(iv) of the Act. The view that we have taken finds support from Commissioner of Wealth Tax Vs. Vasantha, ; Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, ; Commissioner of Wealth Tax Vs. Mira Mehta, and Commissioner of Wealth-tax Vs. Tarachand Agarwalla, ."

5. Taking the same view as taken in the aforesaid case by this court, the question is answered in the affirmative and in favour of the assessee.