(2004) 11 AHC CK 0200

In the Allahabad High Court

Case No : Wealth-tax Reference No. 98 of 1988

Commissioner of Wealth-tax APPELLANT

Vs

Dinesh Kumar RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Citation : (2006) 282 ITR 271

Hon'ble Judges : R.K. Agrawal, J;P. Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant;

Judgement

1. The Wealth-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 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 immovable property which belonged to the firm of which the asses-see is a partner ?

2. The present reference relates to the assessment year 1981-82. The respondent is a partner in a partnership firm which owns an immovable property named Sree Talkies, Agra. He claimed exemption u/s 5(1)(iv) of the Act in respect of the said building. The exemption was denied by the Wealth-tax Officer. However, it was accepted by the Appellate Assistant Commissioner which order has been upheld by the Tribunal.

3. We have heard Shri A. N. Mahajan, the learned standing counsel for the Revenue.

4. The question is as to whether a cinema building can be said to be a house or not, has been decided by this court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, and this court has held that the cinema building cannot be

treated as a house. It is not a dwelling place and people do not reside there. Exemption u/s 5(1)(iv) of the Act is available to a house and by no stretch of imagination a cinema building can be said to be a house.

5. In this view of the matter exemption u/s 5(1)(iv) of the Act is not available to a partner or to an assessee in respect of cinema building.

6. Respectfully following the aforesaid decision we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.