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(1988) 05 RAJ CK 0040

In the Rajasthan High Court

Case No : Wealth-tax Reference Application No. 5 of 1987

Commissioner of Wealth Tax APPELLANT

Vs

Durlabhji RESPONDENT

Date of Decision : 24-05-1988

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3), 5(1)
Wealth Tax Rules, 1957 — Rule 2B(2)

Citation : (1989) 175 ITR 599 : (1990) 49 TAXMAN 138

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant; R.C. Kasliwal and Anant Kasliwal, for the Respondent

Judgement

1. This application by the Commissioner of Wealth-tax u/s 27(3) of the Wealth-tax Act, 1957, is to direct the Tribunal to state the case and refer certain questions of law said to arise out of the Tribunal''s order. The Commissioner had applied to the Tribunal for referring these questions of law arising out of the Tribunal''s order u/s 27(3) of the Act. These questions relate to the applicability of Rule 2B(2) of the Wealth-tax Rules, 1957, and exemption claimed by the assessee u/s 5(1)(xxxii) of the Wealth-tax Act, 1957. The Tribunal has declined to refer any of these questions. Hence, this application u/s 27(3) of the Act.

2. The relevant assessment year is 1979-80. So far as the first question relating to the applicability of Rule 2B(2) of the Wealth-tax Rules is concerned, the same does not arise out of the Tribunal''s order. This rule is attracted only when determination of the market value of the closing stock is at an amount exceeding by more than 20% the value disclosed in the balance-sheet. In the present case, the determination of the market value of the closing stock is at an amount less than 20% above the value disclosed. On the basis of this final determination of the market value in appeal, it is obvious that no question of invoking the aid of Rule 2B(2) arose. This question, therefore, does riot arise out of the Tribunal''s

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order. Accordingly, refusal by the Tribunal to refer this question is justified;

3. The remaining question is with regard to the exemption claimed u/s 5(1)(xxxii) read with the Explanation to Section 5(1)(xxxi) of the Wealth-tax Act, 1957. In our opinion, a question of law does arise in the present case in this behalf, inasmuch as it involves construction of certain statutory provisions and application of the same to the facts of the case. Accordingly, the application is allowed to this extent.

4. Consequently, this application is partly allowed and we direct the Tribunal, u/s 27(3) of the Wealth-tax Act, 1957, to state the case and refer to this court for its decision the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee''s interest in the firm is entitled to exemption u/s 5(1)(xxxii) read with the Explanation to Section 5(1)(xxxi) of the Wealth-tax Act, 1957 ?"

5. We direct accordingly. No costs.

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