
(1995) 11 GUJ CK 0019
In the Gujarat High Court
Case No : WT Ref. No. 29 of 1982

Commissioner of Wealth Tax	Vs	APPELLANT
Girishchandra Chandrashankar		RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 4, 5, 5(1)
Wealth Tax Rules, 1957 — Rule 2

Citation : (1996) 134 CTR 450 : (1996) 219 ITR 682

Hon'ble Judges : S.K. Keshote, J;Rajesh Balia, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—The assessees had interest in the firm of M/s Bharat Weaving and Manufacturing Company, being a partner thereof. While calculating the quantum of exemption under s. 5(1)(ii) the WTO excluded the value of the building included in the assets of the firm as per its balance sheet and consequently decreased the value of exemption. On appeal the AAC confirmed the order of WTO. However on further appeal the Tribunal found in favour of the assessee that he was entitled to the said exemption. The Tribunal directed the WTO to rework the benefit given to the assessee under s. 5(1)(ii) by excluding from the purview of the said section only those lands or buildings belonging to the firm which would otherwise be exempted under s. 5(1) of the Act. On these facts, the Tribunal had referred the following questions of law for the decision of this Court at the instance of CWT :

"1. Whether, on the facts and in the circumstances of the case, the value of the building included in the assets of the firm is to be excluded ?

2. Whether, on the facts and in the circumstances of the case, the benefit under s. 5(1)(ii) should be worked out by excluding from the purview of that section only those lands or building belonging to the firm and otherwise exempted under s. 5(1) of the WT Act ?"

2. Both the learned counsel for the parties candidly stated that the answer to the

question shall be governed by the principle enunciated in the case of CWT vs. Maheskumar R. Patel reported in (1995) 79 Taxman 179 (Guj) in favour of the assessee and the WTO is required to give relief under s. 5(1) on the assessment of the wealth of the assessee as per the principle enunciated therein. In the aforesaid case, after referring to various provisions of the WT Act and Rules framed thereunder, more particularly the definitions of "the assets", "net wealth" s. 4 of the WT Act, and r. 2 of the WT Rules, the Court concluded as under :

"From the reading of the aforesaid provision, it is apparent that for the purpose of determining interest of a person in a partnership "net wealth" of the firm has to be assessed as distinct from the "net assets" of the firm. The definition of "net wealth" makes it abundantly clear that for arriving at any sum total of net wealth the aggregate value of all assets has to be made "in accordance with the provisions of the Act". The provisions of the Act include s. 5 as well which reads as under :

"5. The assets described in various sub-clauses of s. 5(1) subject to overall limit of valuation presented in sub-s. (1A) are not to be included in computing "net wealth" of a person, though such are assets of the person;"

If net wealth of the firm is to be assessed in terms of r. 2 in accordance with the provisions of the Act, obviously the assets which are not to be included and same cannot be made a part of the interest of a person in the partnership firm referable to net wealth."

3. In view of the aforesaid decision of this Court, we answer question No. 1 referred to above that value of the building included in the assets of the firm has to be excluded while computing the net wealth of the firm for the purpose of ascertaining the share of the assessee in the net wealth of the firm to be included in the net wealth of the assessee under s. 4 of the Act. Our answer to question No. 2 consequently is that in the facts and circumstances of the present case, benefit under s. 5(1)(ii) had to be worked out by excluding the value of those land and building of the firm while computing the net wealth of the firm for the purpose of ascertaining the assessee's share to be included in his total wealth which would otherwise be exempted under s. 5(1) of the WT Act. No order as to costs.