(1994) 08 RAJ CK 0025

In the Rajasthan High Court

Case No : Wealth-tax Reference No''s. 78, 79 and 80 of 1984

Commissioner of Wealth-tax APPELLANT

Vs

Gokuldas Pradeep Kumar Rathi RESPONDENT

Date of Decision : 05-08-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 5(1), 7(4)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1995) 129 CTR 306 : (1995) 214 ITR 468

Hon'ble Judges : V.K. Singhal, J;Arun Madan, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following three questions of law arising out of its order dated March 10, 1983, in respect of the assessment years 1977-78, 1978-79 and 1979-80 u/s 27(1) of the Wealth-tax Act, 1957.

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that gratuity liability is an ascertained liability and, therefore, the same should be deducted while determining the market value of shares of Messrs. Krishna Mills Ltd., Beawar ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of Section 7(4) of the Wealth-tax Act are applicable in respect of immovable properties occupied by partners for their self-residence notwithstanding the fact that the properties belonged to the firm ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that deduction u/s 5(1)(iv) of the Wealth-tax Act is admissible in the hands of partners in respect of their interest in the firms in relation to the immovable properties owned by the firm ?"

4. So far as question No. 1 is concerned, the said point has been considered in

Seth Mukund Das Rathi Vs. Commissioner of Wealth-tax, in which it was held by this court that the liability to pay gratuity is not in praesenti but would arise in future on the termination of service, i.e., on retirement, death or termination and is a contingent liability within the meaning of Rule 1D of the Rules. Provision for gratuity was held not deductible in valuing the unquoted equity shares of the company. In view of the above decision of the court, we are of the view that the Income Tax Appellate Tribunal was not justified in holding that the gratuity liability is an ascertained liability and, therefore, the same should be deducted while determining the market value of shares of Krishna Mills Ltd., Beawar.

5. So far as questions Nos. 2 and 3 are concerned, there is difference of opinion in the different High Courts. The Calcutta High Court in the case of Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, the Gauhati High Court in the case of Commissioner of Wealth-tax Vs. Tarachand Agarwalla, the Delhi High Court in the case of Commissioner of Wealth Tax Vs. A.K. Tandon and others, and the Kerala High Court in the case of Commissioner of Wealth-tax Vs. Dr. K.C. Mammen, Malayala Manorama, have held that when the partner of the firm is residing in the house, he is entitled to the exemption u/s 5(1)(iv) of the Wealth-tax Act. The Madras High Court in the case of Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, has held that the partner of the firm is not entitled to the exemption who is living in the house owned by the firm because in such a case the partner cannot claim any specific interest in the firm and the partner''s interest in the house property could" not be considered as immovable property. SLP has also been granted against the judgment of the Gauhati High Court.

6. In the case of Smt. Ganga Devi and Others Vs. Commissioner of Wealth-tax, this court has interpreted the provisions of Section 5(1)(iva) and it was held that a partner cannot claim exemption u/s 5(1)(iva) in respect of the agricultural lands of the firm as the same does not belong to them and the benefit u/s 5(1)(iva) can be given only to the firm and not the individual partners. The language of Section 5(1)(iv) at the relevant time was as under :

" 5. Exemption in respect of certain assets. -- (1) Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee-. . .

(iv) one house or part of a house belonging to the assessee and exclusively used by him for residential purpose :

Provided that, where the value of such house or part (situate in a place with a population exceeding ten thousand) exceeds one lakh of rupees the amount that shall not be included in the net wealth of an assessee under this section shall be one lakh of rupees. "

7. The provisions of Clause (iva) of Sub-section (1) of Section 5 are as under -

"(iva) agricultural land comprised in any tea, coffee, rubber or cardamom plantation belonging to the assessee."

8. From a perusal of the above clause it is evident that the house should be belonging to the assessee. The matter with regard to the provisions of Section 5(1)(iva) in respect of agricultural land was considered in the case of Smt. Ganga Devi and Others Vs. Commissioner of Wealth-tax, and it was found that a firm is not an assessee under the Wealth-tax Act and the property of the firm ceased to be the exclusive property of the partners during the subsistence of the partnership firm.

9. Following the aforesaid judgment, which has taken into consideration the provisions of Section 2(e)(m) and Section 4(1)(b), Rule 1A(m) and Rule 2 of the Rules, we are of the view that the Income Tax Appellate Tribunal was not justified in holding that a partner of the firm is entitled to deduction u/s 5(1)(iv) of the Wealth-tax Act in respect of the property owned by the firm, Similarly, the provisions of Section 7(4) cannot be invoked in respect of the house which is belonging to the firm and not to the assessee. The view taken by the Madras High Court, therefore, appears to be the correct view.

10. Consequently, the reference is answered in favour of the Revenue and against the assessee. No order as to costs.