**(1988) 05 RAJ CK 0048**

**In the Rajasthan High Court**

**Case No :** Wealth-tax Reference No. 228 of 1988

Commissioner of Wealth Tax APPELLANT

Vs

Gopi Chand RESPONDENT

**Date of Decision :** 24-05-1988

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

**Citation :** (1989) 176 ITR 150

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

**Bench :** Division Bench

**Advocate :** V.K. Singhal, for the Appellant; N.M. Ranka, for the Respondent

# Judgement

1. This is an application u/s 27(3) of the Wealth-tax Act, 1957, by the Commissioner of Wealth-tax for a direction to the Tribunal to state the case and refer certain questions of law said to arise out of the Tribunal''s order to this court for its decision.

2. The relevant assessment year is 1978-79.

3. The questions relate to the applicability of Rule 2B(2) of the Wealth-tax Rules, 1957, and the exemption claimed by the assessee u/s 5(1)(xxxii) of the Wealth-tax Act, The Tribunal has declined to refer both these questions u/s 27(1) of the Act, Hence, this application u/s 27(3) of the Act.

4. In our opinion, questions of law do arise with regard to the applicability of Rule 2B(2) of the Wealth-tax Rules as well as the exemption u/s 5(1)(xxxii) of the Wealth-tax Act. The question of applicability of Rule 2B(2) arises where determination of the market value of the closing stock is at an amount exceeding by more than 20 per cent. the value disclosed in the balance-sheet. The dispute between the parties is with regard to the onus of proving the market value of the closing stock at an amount which results in attracting Rule 2B(2). The question of onus of proof requires construction of a statutory provision and it does raise a

question of law. Similarly, the question of exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957, requires construction of a statutory provision read along with the Explanation to Section 5(1)(xxxi). Accordingly, a question of law arises in this behalf as well.

5. Consequently, this application is allowed and the Tribunal is directed u/s 27(3) of the Act to state the case and to refer to this court for its decision the following questions of law, namely ;

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the onus of proof that the market value of the closing stock exceeded by more than 20 per cent. the value disclosed in the balance-sheet of the firm was on the Revenue, and the same not having been proved, Rule 2B(2) of the Wealth-tax Rules, 1957, was not attracted ?

(2) 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 exempt u/s 5(1)(xxxii) read with the Explanation to Section 5(1)(xxxi) of the Wealth-tax Act, 1957?"

6. We direct accordingly.

7. No costs.

 