

(1991) 05 GAU CK 0018
In the Gauhati High Court

Case No : Wealth-tax Reference No. 6 of 1987

Commissioner of Wealth-tax

APPELLANT

Vs

Harendra Prasad Singh and Another

RESPONDENT

Date of Decision : 27-05-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1991) 191 ITR 387

Hon'ble Judges : S.N. Phukan, J;M. Sharma, J

Bench : Division Bench

Advocate : D.K. Talukdar, for the Appellant; M.K. Sarma, for the Respondent

Judgement

S.N. Phukan, J.—This is a reference from the learned Tribunal u/s 27(1) of the Wealth-tax Act, 1957. The reference was made on a petition by the Revenue. The following question has been referred :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to the deduction u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of his share in the house property belonging to the firm of which the assessee is a partner ? "

2. Briefly, the facts are as follows : The reference relates to the assessment years 1978-79 to 1980-81. The assessees were partners of the firm, Messrs. Surendra and Brother, Makum. The assessees claimed deduction u/s 5(1)(iv) of the Wealth-tax Act in respect of their shares in the house property standing in the name of the firm in which they were partners, The Wealth-tax Officer rejected the claim on the ground that the assessees cannot claim any ownership of the house standing in the name of the firm. On appeal, the Appellate Assistant Commissioner, by two separate orders dated November 15, 1983, in the case of each of the assessees, directed the Wealth-tax Officer to allow exemption u/s 5(1)(iv) of the Act. The learned Tribunal upheld the findings of the Appellate Assistant Commissioner on the point. Hence, the present reference.

3. Heard Dr. M.K. Sarma, learned counsel for the assessees, and Mr. D.K. Talukdar, learned standing counsel for the Revenue.

4. According to Dr. Sarma, the point referred is squarely covered by the decision of this court in Commissioner of Wealth-tax Vs. Tarachand Agarwalla, The question which was referred in that case was as follows (at p. 235) :

"Whether, on the facts and in the circumstances of the case and on a proper construction of Section 2(m), Section 4(1)(b), Section 5(1)(iv) of the Wealth-tax Act, 1957, and Rule 2 of the Wealth-tax Rules, 1957, the Tribunal was justified in upholding the direction of the Appellate Assistant Commissioner that exemption of the proportionate share of the interest in the building belonging to the firm should be allowed u/s 5(1)(iv) in the hands of the assessee partner ?"

5. While answering the above reference, this court held as follows (at p. 236) :

"On a reading of the decisions of the Supreme Court Juggi Lal Kamalpat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, read with Section 4(1)(b) and Rule 2, it emerges that where an individual assessee is a partner in a firm, the interest of a partner in the immovable property of the firm is to be included in computing his net wealth. That, interest in the immovable property or benefits arising out of the land, cannot be said to be movable property. Therefore, the contention of learned counsel for the Revenue cannot be accepted. In this view of the matter, the assessee was entitled to exemption as provided u/s 5(1)(iv)."

6. The court also noticed that this view is also supported by the decision in Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, and Commissioner of Wealth Tax Vs. Mira Mehta, . These two decisions were rendered by the Calcutta High Court.

7. The court took note of the decision laid down in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, and further held that (at p. 237 of 180 ITR) :

"For these reasons, the net wealth of the firm should be determined including the value of the building and then it should be allocated amongst the partners indicating the nature of assets and liabilities allotted to the share of the partner and the net wealth of the partner is to be determined by including the share so allotted, and only thereafter, the deduction u/s 5(1)(iv) should be allowed, i.e., deduction should be allowed u/s 5(1)(iv) in the hands of the assessee-partner and not in the hands of the firm."

8. Though Mr. Talukdar, learned counsel for the Revenue, has urged that the question referred in the above case was different, learned counsel has fairly conceded that the views expressed also cover the present reference.

9. We do not see any reason to take a different view. Therefore, we are of the opinion that the ratio laid down in Commissioner of Wealth-tax Vs. Tarachand Agarwalla, squarely covers this case. Accordingly, the question is answered in the

affirmative, i.e., in favour of the assessee and against the Revenue.