

(2003) 02 AHC CK 0043

In the Allahabad High Court

Case No : Wealth-tax Reference No. 30 of 1983

Commissioner of Wealth Tax

APPELLANT

Vs

Laxmi Dutt

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 3, 5(1)

Citation : (2003) 263 ITR 225 : (2003) 132 TAXMAN 37

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Judgement

M. Katju, J.—This is a reference u/s 27 of the Wealth-tax Act, 1957, in which the following question has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in allowing deduction u/s 5(1)(iv) of the Wealth-tax Act, 1957 ?"

2. The assessee is an individual who is a partner in the firm, Laxmi Dutt Roop Chand, along with another partner, Roop Chand.

3. The relevant assessment years are 1974-75 and 1975-76. In his return of net wealth as well as during the assessment proceedings, the assessee claimed deduction u/s 5(1)(iv) of the Wealth-tax Act in respect of the house property owned by the firm. The Wealth-tax Officer rejected the assessee's claim but the appeal was allowed by the Appellate Assistant Commissioner and his order was upheld in further appeal by the Tribunal.

4. In our opinion, there is no merit in the submission of learned counsel for the Department. Section 5(1)(iv) of the Wealth-tax Act, as it existed before its deletion by the Finance Act, 1992, stated :

"5. (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."

Thus, the value of one house belonging to an assessee is not to be included in the net wealth of the assessee for the purposes of the Wealth-tax Act.

5. As regards the house in question, no doubt it has been mentioned that it belongs to a firm but it must be remembered that a firm is not a distinct legal entity unlike a company registered under the Companies Act. When we say that the house is owned by a firm we really mean that the house belongs to the partners. Similarly, when we say that the firm has acquired or sold some property then we really mean in law that its partners have done so. This is because a firm is not a distinct legal entity at all, both under the general law as well as under the Wealth-tax Act, although it is a legal entity under the Income Tax Act.

6. It has been mentioned in Section 3 of the Wealth-tax Act, which is the charging section, that wealth-tax is levied on individual, Hindu undivided family and a company. Thus, wealth-tax cannot be levied on a firm under the Wealth-tax Act.

7. Since the house in question, which is said to belong to the firm, in reality belongs to the partners and since the assessee is one of the co-owners of the house property, in our opinion, the value of his share in the house property has to be deducted from the net wealth for the purposes of wealth-tax.

8. We, therefore, answer the question in the affirmative, that is, in favour of the assessee and against the Department.