
(1972) 08 AHC CK 0006

In the Allahabad High Court

Case No : Wealth-tax Reference No. 430 of 1971

Commissioner of Wealth Tax

APPELLANT

Vs

Laxmipat Singhania

RESPONDENT

Date of Decision : 30-08-1972

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1974) 97 ITR 188

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.R. Misra, for the Appellant; V.B. Upadhya, for the Respondent

Judgement

Gulati, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the Commissioner of Wealth-tax, Kanpur. The following question has been referred to us:

"Whether, on the facts and in the circumstances of the case, the provisions of Section 2(m) of the Wealth-tax Act, 1957, are applicable for determination of the assessee's interest in the wealth of the firm styled as Messrs. J. K. Bankers, for the assessment years 1957-58 to 1964-65 ?"

2. The assessee is a Hindu undivided family. Lala Laxmipat Singhania is its karta. He had a share in a partnership firm of the name and style of Messrs. J. K. Bankers. For the purpose of computing the total wealth of the assessee's family its share in the wealth of the firm had to be taken into consideration. While computing such a share the Wealth-tax Officer took the net wealth of the firm as per its books of accounts ignoring its liability on account of the outstanding Income Tax dues. The assessee contended that the Income Tax liability of the firm should have been deducted out of its wealth in order to arrive at the net wealth of the firm. The Appellate Assistant Commissioner of Income Tax took the same view on appeal on the ground that under Sub-clauses (a) and (b) of Clause (iii) of Section 2(m) of the Wealth-tax Act the old Income Tax liability could not

be deducted. On second appeal the Income Tax Appellate Tribunal reversed the finding of the Appellate Assistant Commissioner of Income Tax and held that Section 2(m) was not applicable and the outstanding Income Tax liability of the firm even if old was deductible while computing its net wealth.

3. A similar question arose in the case of Commissioner of Wealth Tax Vs. Padampat Singhania, (W.T.R. No. 166 of 1970, decided on February 9, 1972). Learned counsel for the parties are agreed that the facts and the question of law in the instant case are identical with the facts and the question of law in the case of Padampat Singhania. In that case this court has held that Section 2(m) is not applicable to a case like the present one.

4. For the reasons given in that judgment we hold that Section 2(m) of the Act is not applicable and as such the Income Tax liability of the firm is to be deducted out of the total wealth of the firm for purposes of ascertaining the assessee's share in that firm.

5. We accordingly answer the question in the negative, in favour of the assessee and against the department. The assessee is entitled to its costs which we assess at Rs. 200.