(2006) 04 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : W.T.C. No. 1 of 1991

Commissioner of Wealth-tax — APPELLANT

Vs

Mangat Rai Dhanda — RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3), 5(1)
Wealth Tax Rules, 1957 — Rule 2

Citation : (2006) 284 ITR 371

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : D.S. Patwalia, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is a petition filed u/s 27(3) of the Wealth-tax Act, 1957, seeking a direction to the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, to draw up a statement of case and refer the following questions of law, arising out of the order dated September 18,1989, passed in W.T.A. No. 471 of 1987, for the assessment year 1978-79, to this Court for its opinion:

(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing deduction u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the assessee''s share in the land and building of the firm in which he is a partner?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the following deductions should be allowed in computing commercial profits for the purpose of capitalisation:

1. 50 per cent, of salary paid to managing partner

2. Depreciation

3. Income Tax payable by firm

4. Bad debts.

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that multiple of 8.33 should be applied for determining the value of the property?

2. We have heard Sh. D.S. Patwalia, advocate for the Revenue. He could not dispute that this Court in Commissioner of Wealth Tax Vs. Mrs. Anju Munjal and Others, has already decided the issue sought to be raised in the present case in favour of the assessee, by following its earlier judgment in the case of Commissioner of Wealth-tax Vs. Vipin Kumar, which has attained finality. The relevant para, of the judgment in Commissioner of Wealth-tax Vs. Vipin Kumar, is extracted below (page 945):

According to the principles of English jurisprudence which we have adopted in India for the purpose of determining legal rights, there is no such thing as a firm known to the law. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , it was clearly held by their Lordships of the Supreme Court that since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. In Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , the apex court held that the interest of a partner in a partnership firm belonged to him and would be includible in his ''assets'' and will have to be taken into account while computing his net wealth. In this view of the matter, the assessees in the present case could be said to be having specific interest in the factory land and the building belonging to the firm and, as such, were entitled to the exemption granted to them by the Tribunal. Moreover, Rule 2 of the Wealth-tax Rules providing for the detailed method of determining the value of the interest of a person in a firm of which he is a partner is a pointer to the fact that in the context of wealth-tax, a partner can claim to have a specific interest in its assets exclusively apart from his interest as a partner in the firm. We have already observed that the property of the firm is, in fact, the property of its partners and, consequently, we cannot accept the contention of the Revenue that since the factory land and the building in the present case belong to the firm, the two assessees who were partners therein were not entitled to claim any deduction u/s 5(1)(iv) of the Act. The view that we have taken finds support from Commissioner of Wealth Tax Vs. Vasantha, ; Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, ; Commissioner of Wealth Tax Vs. Mira Mehta, and Commissioner of Wealth-tax Vs. Tarachand Agarwalla, .

3. The same view has been expressed by the Madras High Court in Commissioner of Wealth-tax Vs. M. Appuswamy, and Commissioner of Wealth-tax Vs. R. Ariff and Others, .

4. Counsel has also referred to two judgments in the cases of Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, and Prakash Chand Modi

Vs. Commissioner of Wealth-tax, to support his arguments that the question of law raised by the Revenue in the petition should be directed to be referred to this Court for its opinion, since the similar question raised in the above judgments has already been answered against the assessee and in favour of the Revenue though by other courts.

5. Since the issue sought to be raised by the Revenue is already covered by the judgment of the jurisdictional High Court, we do not deem it appropriate to refer the question of law to this Court again merely because other courts have taken a view different to this Court. Once this Court has already expressed its opinion on the question of law sought to be raised, there is no valid reason to direct the Tribunal to refer the same question of law to this Court.

6. Arguments on other issues were not addressed.

7. Hence, the present petition is dismissed.