(2009) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : W.T.R. Petition No. 41 of 1987

Commissioner of Wealth Tax APPELLANT

Vs

Manna Lal RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:
Wealth Tax Act, 1957 — Section 2(m), 5, 5(1)(4), 5(1)(xxxii)

Citation : (2009) 02 RAJ CK 0001

Hon'ble Judges : R.C. Gandhi, C.J;M.N. Bhandari, J

Bench : Division Bench

Advocate : Anuroop Singhi, for the Appellant; J.K. Ranka, for the Respondent

Judgement

1. This reference has been made by the Income Tax Appellate Tribunal arising out of WTA Nos. 6, 18, 19 and 21/Delhi/1985 for the assessment year 1979-80. The following questions have been referred for our answer: (i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that M/s. hazari Mal Milap Chand is an industrial undertaking and that the assessee is entitled to exemption u/s 5(1)(xxxii) of the W.T. Act, 1957?

(ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that in respect of the valuation of the assessee''s interest in the immovable properties of the firm, a separate deduction u/s 5(1)(iv) of the Act, was admissible to the assessee as a partner?

So far as question No. 1 is concerned, same has already been dealt with and decided today by us in case title, CWT v. Smt. Bhanwari Devi, D.B. W.T. Reference No. 4 of 1988, decided today. In the judgment (supra), the question was answered against the Revenue and in favour of the Assessee and accordingly the first question referred to us is decided in view of the judgment rendered in the case title Bhanwari Devi (supra).

2. So far as question No. 2 is concerned, it pertains to the benefit u/s 5(1)(iv) of the Wealth Tax Act. The issue in dispute is "whether an immovable property

belonging to the firm can be assessed in the hands of the assessee to its share for grant of benefit under the aforesaid provision". In the present reference, the property of the firm is a house and the assessee has "claimed benefit; u/s 5(1)(iv) of the Wealth Tax Act to the extent of his share. The issue as to whether such benefit u/s 5(1)(iv) of Wealth Tax Act can be given to the assessee being a partner of the firm has been completely answered by the Supreme Court in case title Commissioner of Wealth Tax, T.N.-III, Madras Vs. T.S. Sundaram, Madras, observing as under:-

Thus, the expression ''net wealth'' had to include assets exempt u/s 5 since they were otherwise taxable unlike certain things which are excluded from the definition of ''assets'' u/s 2(m) of the Act. This led to the result that the net wealth of the firm determined in accordance with the rules had to include also the assets which may be exempt u/s 5 and all the assets and liabilities had to be apportioned and allocated by the partners. It followed that the exemption u/s 5 could be given only after determining the net wealth of the individual partner in the same manner and the problem was, thus, solved by the very definition of ''net wealth'' on the application of the principle laid down by the Supreme Court.

Thus, there are two conflicting opinions one by the Karnataka High Court in the case of Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, holding that the exemption can be given only in the hands of the individual partner and the other by the Patna High Court in the case of Commissioner of Wealth Tax Vs. Nand Lal Jalan, holding that the exemption may be given in computing the net wealth of the firm before ascertaining the interest of the partner.

The Tribunal was right in following the view taken by the Karnataka High Court in the case of Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, in preference to the : view of the Patna High Court in Commissioner of Wealth Tax Vs. Nand Lal Jalan, . The ultimate direction given by the Tribunal in the appeal filed by the Revenue as quoted earlier is also the correct direction to give in such a case.

3. In the judgment (supra), the Apex Court examined the issued and held that even if the house belongs to the firm, benefit u/s 5(1)(iv) of the Wealth Tax Act would be admissible to the partner being an assessee separately. In view of the above, question No. 2 is also answered against the Revenue and in favour of the Assessee and accordingly the deduction u/s 5(1)(iv) of the Wealth Tax Act would be admissible to the Assessee with regard to the house property belonging to the firm. Both the questions are accordingly answered against the Revenue and in favour of the Assessee. The reference is accordingly disposed of.