
(2006) 09 P&H CK 0262
In the Punjab And Haryana At Chandigarh

Commissioner of Wealth-tax

APPELLANT

Vs

Mohan Lal Kapur

RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:

Citation : (2006) 09 P&H CK 0262

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

Bench : Division Bench

Judgement

Rajesh Bindal, J.—Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as, "the Tribunal"), arising out of its order dated 27-11-1987 in WTA Nos. 104,106 to 108(Chd.) of 1987, in respect of assessment years 1981-82, 1983-84 to 1985-86:

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 assessee's share in land and building of the firm in which he is a partner?

2. As is evident from the facts recorded in the statement of case, the claim of the assessee for deduction u/s 5(1)(iv) of the Act, in respect of his share of assets in immovable property held by the firm, in which he was a partner, was rejected by the assessing officer on the ground that owner of the immovable property was not the assessee but the firm. In appeal before the Appellant Assistant Commissioner, the assessee succeeded. The order of the Appellate Assistant Commissioner was upheld by the Tribunal in appeal by the revenue.

3. As to whether partners of a firm have their independent entity as against the firm to which they constitute, the law has been settled by the Hon'ble Supreme Court in N. Khadervali Saheb and Anr Vs. N. Gudu Sahib (Decd.) and Others, in the following words:

A partnership firm is not an independent legal entity, the partners are the real

owners of the assets of the partnership firm. Actually the firm name is only a compendious name given to the partnership for the sake of convenience. The assets of the partnership belong to and are owned by the partners of the firm. So long as the partnership continues each partner is interested in all the assets of the partnership firm as each partner is owner of the assets to the extent of his share in the partnership.

4. Issue, identical to what has been referred above, was considered by Karnataka High Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, and while referring to a number of earlier judgments, the issue was decided in favour of the assessee.

5. The same view was followed by Calcutta High Court in Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, .

6. While considering the issue, this Court in Commissioner of Wealth-tax Vs. Vipin Kumar, held as under:

Learned Counsel for the revenue, while assailing the order of the Tribunal granting relief to the assessees, has strenuously contended before us that, in the case of a partnership, no partner, during the subsistence of the partnership, could claim to have any specific interest in its assets exclusively apart from his interest as a partner in the firm and since the factory land and building was an asset of the firm, the assessees in the instant case could not be said to be entitled to any portion of the house property as exclusively belonging to them and were, thus, not entitled to claim the exemption u/s 5(1)(iv) of the Act. We find no substance in this contention. It is by now well-settled that a firm as such is not a legal entity and any property owned by it is really the property of the partners and the use of the expression "firm" is only a compendious mode to designate the persons who have agreed to a joint venture and what is called the property of the firm is really the property of the partners. The firm is not recognised as a direct entity from the members constituting it.... 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 Kamalapat 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 assesseees 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,

7. The same view was followed by this Court in CWT v. Umesh Kumar (1998) 144 CTR (P & H) 556; CWT v. Sudhir Kumar (1998) 144 CTR (P & H) 554; CWT v. Sarabjit Singh (1998) 145 CTR (P & H) 155; CWT v. Raman Kant (1998) 145 CTR (P & H) 157; CWT v. Pawan Kant (1998) 149 CTR (P & H) 20; Commissioner of Wealth Tax Vs. Mrs. Anju Munjal and Others, and CWT v. Raman Kant (2000) 163 CTR (P. & H.) 87.

8. Recently, the Hon'ble Supreme Court in Commissioner of Wealth Tax, T.N.-III, Madras Vs. T.S. Sundaram, Madras, , considered the issue and approved the judgment of Karnataka High Court in Mrs. Christine Cardoza's case (supra).

9. In CWT v. Deepam Kumar Patel (1997) 92 Taxman(1996) 217 ITR 5375 221; CWT v. Gurdeep Singh (1997) 141 CTR (Delhi) 23; Narsibhai Patel Vs. Commissioner of Wealth-tax, ; Jagdish Chandra Grover Vs. Commissioner of Wealth-tax, ; CWT v. Parsuram Chouthmal (HUF) (1995) 211 ITR 573 ; CWT v. Mahesh Kumar R. Patel (1995) 216 ITR 2724 and CWT v. Surajratan R. Mohatta (HUF) , different High Courts have taken a view in favour of the assessee.

10. The issue being covered by an earlier judgment of this Court in Vipin Kumar's case (supra), which was followed in a number of cases, we answer the same against the revenue and in favour of the assessee.

11. Reference is disposed of accordingly.