(1988) 05 RAJ CK 0007

In the Rajasthan High Court

Case No : .W.T Reference Application No''s. 32 and 37 of 1987

Commissioner of Wealth Tax APPELLANT

Vs

Narendra Kumar Surana RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:
Wealth Tax Act, 1957 — Section 27(1), 27(3), 5(1)(4), 5(1)(xxxii)

Citation : (1988) 40 TAXMAN 176

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant; N.M. Ranka, for the Respondent

Judgement

J.S. Verma, C.J.—This application u/s 27(3) of the Wealth-tax Act, 1957 (''the Act''), by the Commissioner is for a direction to the Tribunal to state the case and refer certain questions of law said to arise out of the Tribunal''s order. On the Commissioner''s application to the Tribunal u/s 27(1) the questions relating to exemption u/s 5(1)(xxxii) and section 5(1)(iv) of the Act have already been referred by the Tribunal to this Court for its decision. That is D.B. WT Reference No. 41 of 1987. The surviving questions now are only with regard to the applicability of rule 2B(2) of the Wealth-tax Rules, 1957 (''the Rules''), and determination of the question whether the firm Mannalal Nirmal Kumar & Co., Jaipur is merely an extension of Hazarimal Milapchand Surana or a distinct and separate firm. The relevant assessment year is 1979-80:

In our opinion, the question of applicability of rule 2B(2) does raise a question of law as indicated by us in CWT v. Mannalal [D.B. IT Reference No. 3 of 1987]. For the same reasons a direction to refer that question should be given in the present case also. We are also of the opinion that the question whether the two firms are in substance the same or they are distinct entities raises a question of law, inasmuch as it involves application of certain principles of law to the facts found proved by the Tribunal. Accordingly, this application should be allowed in respect of both these questions.

2. Consequently, we allow the application and direct the Tribunal u/s 27(3) to state the case and refer to this Court for its decision the following questions of law, namely:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the onus of proving that the market value of the closing stock exceeded by more than 20 per cent the value disclosed in the balance sheet of the firm was on the revenue and the same not having been proved rule 2B(2) of the Wealth-tax Rules, 1957 was not attracted?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the firm Mannalal Nirmal Kumar Surana & Co., Jaipur is distinct from and not merely an extension of the firm Hazarimal Milapchand Surana and, consequently, in computing the assessee''s liability on that basis?

No costs.