(1998) 03 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : WT Ref. No''s. 89, 89-A, 89-B, 89-C, 90, 90-A, 90-B and 90-C of 1988

Commissioner of Wealth Tax — APPELLANT

Vs

Pawan Kant and Others — RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:
Income Tax Act, 1961 — Section 28
Wealth Tax Act, 1957 — Section 27(1), 5(1)

Citation : (1998) 149 CTR 20

Hon'ble Judges : N.K. Agarwal, J;G.C. Garg, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.K. Agrawal, J.—The following common question of law has been referred to this Court for opinion under s. 27(1) of the WT Act, 1957 (for short, ''the Act'') in respect of :

(i) CWT vs. Shri Pawan Kant (asst. yrs. 1979-80 to 1980-81);

(ii) CWT vs. Shri Raman Kant (asst. yr. 1980-81)

(iii) CWT vs. Shri Sunil Kant (asst. yrs. 1979-80 and 1980-81);

(iv) CWT vs. Shri Umesh Munjal (asst. yrs. 1979-80 and 1980-81); and

(v) CWT vs. Shri Suman Kant Munjal (asst. yr. 1980-81) :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to deduction under s. 5(1)(iv) in respect of his/her share in the land and building owned by the firm in which he/she is a partner ?"

2. The assessees were partners in a partnership firm. They claimed exemption for their shares in the property of the firm under s. 5(1)(iv) of the Act. The WTO declined to allow exemption, holding that the property belonged to the

partnership to a house or part of a house belonging to the assessee.

The Tribunal took the view that exemption was to be allowed to the assessees in respect of their shares in the property held by the firm and the value of their shares was not to be included in their taxable wealth.

3. A Division Bench of this Court had an occasion to examine a similar question in Commissioner of Wealth-tax Vs. Vipin Kumar, . After examining the question whether the assessee was entitled to the exemption in respect of the property belonging to the firm in which he was a partner, it was observed at page 945 of ITR as under :

"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 vs. Bhaskara Krishnappa AIR 1966 SC 1300, 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 assessee 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, r. 2 of the WT 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 under 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, ."

Taking the same view as taken in the aforesaid case by this Court, the question is answered in the affirmative and in favour of the assessee.

