(1998) 03 P&H CK 0013

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
16 March, 1998 A. Y. 1979-80 and 1980-81

COMMISSIONER OF WEALTH TAX — APPELLANT

Vs

PAWAN KANT and Others — RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Citation : (1998) 149 CTR 20

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

Bench : Full Bench

Advocate : R. P. Sawhney With Rajesh Bindal, for the Revenue None, for the Assessee, for the Appellant;

Judgement

N. K. Agrawal, J.

The following common question of law has been referred to this Court for opinion u/s 27(1) of the Wealth Tax Act, 1957 (for short, ''the Act'') in respect of:

(i) CWT v. Shri Pawan Kant (assessment years 1979-80 to 1980-81);

(ii) CWT v. Shri Raman Kant (assessment year 1980-81)

(iii) CWT v. Shri Sunil Kant (assessment years 1979-80 and 1980~81);

(iv) CWT v. Shri Umesh Munjal (assessment years 1979-80 and 1980-81); and

(v) CWT v. Shri Suman Kant Munjal (assessment year 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 u/s 5(1)(iv) in respect of his/her share in the land and building owned by the firm, styled as M/s Rockman Cycle Industries, Ludhiana, 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 u/s 5(1)(iv) of the Act. The Wealth Tax

Officer 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 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 I 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, 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, "

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.

