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(2004) 11 AHC CK 0218

In the Allahabad High Court

Case No : WT Reference No. 241 of 1987 and R.A. No''s. 802 to 806 (Del) of 1987 16 November 2004

Commissioner of Wealth-tax APPELLANT

Vs

Pramod Kumar Agarwal RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Citation : (2006) 153 TAXMAN 360

Hon'ble Judges : R.K Agrawal, J;Dilip Gupta, J

Bench : Full Bench

Advocate : Dhananjal Awasthl, for the Appellant;

Judgement

The Income Tax Appellate Tribunal, New Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as the ''Act'') for opinion of this Court:

"Whether the ITAT is legally correct in holding that the assessee was entitled to exemption u/s 5(1)(iv) of the W.T. Act in respect of his share in the value of immovable property which belonged to the firm of which the assessee is a partner?"

2. Briefly stated the facts, giving rise to the present case, are as follows. The reference relates to the assessment year 1981-82. The Income Tax Appellate Tribunal has made a reference in respect of five persons similarly situated. All the five persons are partners in different firms, which own a Cinema Hall. They claimed exemption u/s 5(1)(iv) of the Act in respect of their share in the Cinema Hall. The exemption was disallowed by the Wealth-tax Officer. However, the Commissioner (Appeals) had allowed the exemption under the aforesaid provisions. The revenue''s appeal before the Tribunal has failed.

In favour of revenue.

3. We have heard Sri Dhananjai Awasthi, learned Standing counsel for the

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revenue. No body has appeared for the assessee. The exemption u/s 5(1)(iv) of the Act is available to an assessee under the Act in respect of one house or a part of a house belonging to him. The Cinema building cannot be said to be a house as a house is commonly known as a dwelling place in which people reside. This court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, has held that exemption u/s 5(1)(iv) of the Act is not available in respect of a Cinema building.

4. Respectfully following the aforesaid decision, we answer the question ref erred to us in the negative, i.e., in favour of the revenue and against the assessee. There shall be no order as to costs.

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