
(1989) 07 CAL CK 0060
In the Calcutta High Court
Case No : Matter (Wealth-tax) No. 265 of 1984

Commissioner of Wealth Tax	Vs	APPELLANT
Premnarain Praveen Kumar		RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1), 5(1A)

Citation : (1991) 187 ITR 539

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1977-78, 1978-79 and 1979-80, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal, was justified in terms of Section 4(1)(b) read with Rule 2(1) of Wealth-tax Rules in directing that the net wealth of the firm should be computed after deducting the exemption u/s 5(1)(xxiii) read with Section 5(1A) of the Act before the determination of the value of the interest of the partner in the firm ?"

2. The short question which calls for determination in this reference is whether, in computing the net wealth of the firm, the exemption available to all the partners in terms of Section 5(1)(xxiii) ought to be allowed. The Tribunal held that the Wealth-tax Officer should recompute the net wealth of the firm after deducting the exemption u/s 5(1)(xxiii) read with Section 5(1A) from the net wealth of the firm.

3. In our view, the Tribunal fell in error. A firm is not an assessee under the Wealth-tax Act. A partner is assessable in respect of his share of interest in the firm. A partner of a firm cannot claim ownership in specific properties belonging to the partnership firm either during the continuance of the partnership or even on its dissolution but is entitled only to get a share in the profits during its

continuance and is further entitled upon its dissolution or his retirement therefrom to the value of his share in the surplus of the partnership assets left after deduction of liabilities and prior charges on the date of dissolution or retirement. The interest of a partner in the partnership firm is property or asset liable to be included in the net wealth of the partner and is exigible to wealth-tax under the Act. Such asset will have to be valued for the purposes of the Act and, in this behalf, Rule 2(1) of the Wealth-tax Rules, 1957, prescribes the manner of valuing such interest. This rule provides that, in order to determine the valuation of a partner's interest in the firm, first the net wealth of the firm has to be determined. The said rule further provides as to how the net wealth of the firm so determined shall be allocated among the partners of the firm. The allocated amount will be regarded as the value of the interest of each partner in the firm. A firm is not assessable to wealth-tax. Accordingly, the question of grant of any exemption will not arise. Exemption, if any, available to any partner in his individual wealth-tax assessment from net wealth including the allocated amount being the value of his interest in the firm, can be considered only in the partner's individual assessments. Exemption available to the partners under the Act in their individual assessments cannot be held to be any liability or debt of the firm in computing its net wealth under Rule 2(1) read with Section 7 of the Act.

4. In this connection, reference may be made to the decisions of this court in Commissioner of Wealth Tax Vs. Mira Mehta, and in Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, .

5. We, therefore, answer this question in this reference in the negative and in favour of the Revenue.

6. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

7. I agree.