

(1983) 03 PAT CK 0009

In the Patna High Court

Case No : IT Reference Case No. 135 of 1975

Commissioner of Wealth Tax

APPELLANT

Vs

Radha Krishna Jalan

RESPONDENT

Date of Decision : 11-03-1983

Acts Referred:

Wealth Tax Act, 1957 — Section 2(m), 5(1)(iv)

Citation : (1984) 16 TAXMAN 375

Hon'ble Judges : S.K. Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia, for the Appellant; K.N. Jain, for the Respondent

Judgement

1. A statement of case has been submitted by the Tribunal, Patna Bench, "B", referring the following question of law for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that under rule 2 of the Wealth-tax Rules, the net wealth of the firm was to be computed after considering all the exemptions under the Wealth-tax Act, 1957?

The Tribunal did not consider the matter in detail, as it was submitted before the Tribunal that the facts of the case were exactly similar to the facts of the case of Shri Nand Lal Jalan which had been disposed of by the Tribunal. In that case also, a reference of the same question had been made to this Court. The statement of the case insofar as the aforementioned Shri Nand Lal Jalan is concerned, had been made Annexure A to this case and the order of the Tribunal in that case has been made Annexure B.

2. From the statement of the case in Shri Nand Lal Jalan aforementioned, it appears that the assessee is a partner in the firm Radha Krishna Sanwar Prasad. The second partner is Shri Nand Lal Jalan, the first partner being Radha Krishna Jalan, the assessee in this case. Both the partners reside in a house which belongs to the aforesaid firm. Before the WTO, the assessee claimed exemption

u/s 5(1)(iv) of the Wealth-tax Act, 1957 ("the Act") in respect of the house. The WTO rejected the claim of the assessee on the ground that the house belonged to the firm and not to the assessee. On appeal, the AAC confirmed the order of the WTO. On further appeal to the Tribunal, the assessee contended that the partners should be treated as owners of the house standing in the name of the firm which was nothing but a group of its partners. Alternatively, the assessee pleaded that while computing the net wealth of the firm under rule 2 of the Wealth-tax Rules, 1957, for the purpose of determining the interest of the partner in the firm, exemption u/s 5(1)(iv) should be allowed to the firm. The Tribunal observed that the said exemption u/s 5(1)(iv) was in respect of the house belonging to the firm. As the assessee in this case did not own the house, which in fact stood in the name of the aforesaid firm, the assessee could not be entitled to the exemption u/s 5(1)(iv). However, on the alternative plea taken by the assessee, the Tribunal observed that as per rule 2 net wealth of the firm was first to be determined for calculating the interest of the partner of the firm and for that purpose the firm had to be treated as an assessee under the Act, and all the exemptions under the Act had to be considered before arriving at the net wealth of the firm. The Tribunal, therefore, directed that the exemption of Rs. 1,00,000 should be allowed to the firm while computing the net wealth of the firm.

3. It was argued that the order was not correct in law because nowhere in the Act was there any determining provision to the effect that a firm should be treated as an assessee. Therefore, the Tribunal's observation that the firm should be treated as an assessee did not fit in with the scheme of the Act. Furthermore, the term "net wealth" appearing in rule 2 was to be construed as "net wealth" to be ascertained according to the commercial notions, the term "net wealth" had been defined in section 2(m) of the Act, as follows:

"net wealth" means the amount by which the aggregate value... of all the assets,... belonging to the assessee... in excess of the aggregate value of all the debts owed by the assessee...

It was, thus, argued that it was clear that this definition would not apply to a firm which is not an assessee under the Act. Therefore, the Tribunal's observation that under rule 2 net wealth was to be computed in accordance with the provisions of the Act and whatever exclusions and inclusions apply to an assessee would apply to the firm was erroneous in law.

4. As has already been stated above, the firm consisted of two partners, namely, Shri Radha Krishna Jalan and Shri Nand Lal Jalan. Identical question was referred for the opinion of this Court in the case of Shri Nand Lal Jalan, one of the partners, and this Court in the case of Commissioner of Wealth Tax Vs. Nand Lal Jalan, upheld the contention of the assessee. It was held in that case that in determining, for the purpose of net wealth of the assessee, the net wealth of the firm by reference to rule 2, the exemption u/s 5(1)(iv) was admissible. It was further held that a firm is not a legal entity even though it has some attributes of

personality. Firm is a compendious expression to designate an entity, not a person. What is called property of the firm is the property of the partners and what are called debts and liabilities of the firm are their debts and liabilities. The assets as a whole belong to the partners. In computing the net wealth of the firm by reference to rule 2, if a partner qualifies for any exemption provided under the Act, such exemption must be taken into consideration in determining the net wealth of the firm. Where a firm owns a house and a partner resides in a portion of the house, the exemption provided by section 5(1)(iv) should be taken into consideration in determining the net wealth of the firm. It is a simple formula that if a thing is available to all jointly, the proportionate share of each one individually cannot be denied to the individual.

5. Since the matter referred to this Court with regard to Shri Nand Lai Jalan, one of the partners, is identical to that of the other partner, Shri Radha Krishna Jalan, and the point of law referred being the same, the matter already stands concluded by the aforementioned decision of this Court. We are, accordingly, of the opinion that on the facts and in the circumstances of the case, the question referred to this Court must be answered in favour of the assessee and against the department. However, in the circumstances of the case, there will be no order as to costs.