(1995) 05 GAU CK 0003

In the Gauhati High Court

Case No : WT Reference No. 22 of 1990

Commissioner of Wealth Tax — APPELLANT

Vs

Ramewater Sikaria — RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1), 5(1)(iv)

Citation : (1995) 81 TAXMAN 458

Hon'ble Judges : D.N. Baruah, J;B.N. Singh Neelam, J

Bench : Division Bench

Advocate : D.K. Talukdar, for the Appellant; R.K. Joshi, for the Respondent

Judgement

Baruah, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957 (''the Act''). The following question has been referred at the instance of the department:

"Whether, on the facts and in the circumstances of the case, the Tribunal Any was justified in sustaining the order of the Appellate Assistant Commissioner allowing Exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in the hands of the assessee in determining the value of the interest of the assessee in the property held by the firm in which the assessee is a partner?"

The assessee, being an individual, was a partner of a firm, which owned certain immovable properties. In respect of the value of the properties owned by the firm, the assessee clamed exemption u/s 5(1)(iv) of the Act. The assessee took up the matter before the AAC who directed the WTO to allow the claim of the assessee upon which the revenue took up the matter before the Tribunal and the Tribunal sustained the order of the AAC. Therefore, at the instance of the revenue this reference is so made.

2. The point raised in this reference has already been decided in favour of the assessee in a number of decisions of this Court including in CWT v. Tarachand Agarwalla [1989] 2 GLR 129. In the said decision this Court held that where an individual assessee was a partner in a firm, the interest of the partner in the

immovable property was to be included in computing his net wealth. That interest in the immovable property or benefits to arise out of the land, could not be said to be movable property. Therefore, the contention of the revenue was rejected. The question was answered in the affirmative, in favour of the assessee and against the revenue holding that the assessee was entitled to full deduction as provided u/s 5(1)(iv).

3. Following the said decision, we answer this reference also in the affirmative in favour of the assessee and against the revenue. On the facts and circumstances of the case, there will be no direction as to costs.

