

(1983) 04 AHC CK 0037

In the Allahabad High Court

Case No : Wealth-tax Reference No. 468 of 1977

Commissioner of Wealth-tax

APPELLANT

Vs

R.L. Wig

RESPONDENT

Date of Decision : 26-04-1983

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1983) 35 CTR 324 : (1984) 147 ITR 235 : (1983) 15 TAXMAN 143

Hon'ble Judges : V.K. Mehrotra, J; R.M. Sahai, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; R.K. Gulati, for the Respondent

Judgement

V.K. Mehrotra, J.—At the instance of the CWT, Kanpur, the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following question of law for the opinion of this court u/s 27(2) of the W.T. Act, 1957.

"Whether, on the facts and in the circumstances of the case, the ITAT is correct in allowing as a liability to Nagar Mahapalika of paying 75% of difference between the purchase and sale price of the impugned plots which did not arise during the year under consideration ?"

2. The facts found are that a plot of land, which had been taken on lease by the assessee from the Nagar Mahapalika, Kanpur, was subject to the condition that in case the assessee sells the plot, before making any construction thereon, the Mahapalika would be entitled to a share of 75% in the profit made in the transaction. On the valuation date, namely, March 31, 1972, relevant to the assessment year 1972-73, the plot of land had remained without any construction by the assessee. The WTO computed the price of the plot at Rs. 66,870 on the basis of its assumed market value on that date. He negated the claim of the assessee that 75% of the amount of increase over the cost of the plot which had been paid by the assessee should be deducted under the aforesaid covenant. This order was upheld by the AAC but the Income Tax

Appellate Tribunal, before which the matter went in a second appeal, took the view that on account of the covenant aforesaid, the real wealth in the hands of the assessee in respect of the plot in question could only be worked out after deducting the amount of 75% of the notional profit if the land was to be sold on 31st March, 1972. It followed the view of a Division Bench of the Delhi High Court in this respect. The Department did not accept that view to be correct and sought the present reference.

3. The decision upon which the Appellate Tribunal relied was taken in appeal by the CWT, New Delhi, before the Supreme Court. The decision of the Supreme Court is Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, .

4. In Sikand's case, the view taken by the Supreme Court was that whenever there was a covenant entitling the lessor to share the profit on the sale of immovable property, the share of the lessor had to be deducted from the net wealth of the assessee in case sale of that property took place or was assumed to have taken place. Before the Supreme Court, there was a covenant entitling the lessor to share the profit to the extent of 50% in the event of sale. The Supreme Court negated the plea raised on behalf of the Department that, in the absence of an actual sale, the right to share the profit was, at best, a contingent right.

5. In the present case, the covenant, that is, the term that the Mahapalika was entitled to a share of 75% in the profit if the plot of land was sold, is in the nature of a restriction upon the right of the assessee in the event of the sale of the property. Of course, the restriction was to operate only till such time that no construction was made by the assessee over the plot of land. In view of the principle laid down by the Supreme Court in the aforesaid case which, in our opinion, squarely applies to the facts of the present case, we answer the question in the affirmative, in favour of the assessee and against the Commissioner of Wealth-tax. The assessee will be entitled to his costs which we assess at Rs. 250.

6. A copy of our opinion shall be forwarded to the Tribunal for appropriate orders in conformity thereto in terms of Section 27(6) of the Act.