(1989) 12 AHC CK 0019

In the Allahabad High Court

Case No : Wealth-tax Reference Application No''s. 267 to 276 and 296 to 304 of 1988

Commissioner of Wealth-tax APPELLANT

Vs

Shyam Lal RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:
Wealth Tax Act, 1957 — Section 7(1)

Citation : (1990) 184 ITR 291

Hon'ble Judges : M.M. Lal, J;A.N. Verma, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; C.S. Agarwal and Vikram Gulati, for the Respondent

Judgement

1. We have heard Sri M. Katiu, learned counsel for the Commissioner of Wealth-tax and Sri C.S. Agarwal for the assessee. At the outset, Sri C.S. Agarwal raised a preliminary objection relying on a decision of the Delhi High Court in Commissioner of Wealth Tax Vs. Himalaya Trading Co., . The objection was that the Tribunal having adopted a particular method of calculating the fair market value which was reasonable and proper, no question of law can be said to arise out of the order of the Tribunal. We are unable to agree. In our opinion, the objection begs the issue whether this application should be allowed or not. In the decision cited by learned counsel for the assessee, the High Court had found as a fact that the Tribunal had adopted a well recognised method of evaluating the fair market value of the land and that, in any case, the method adopted by the Tribunal was a reasonable method of evaluation. It is to ascertain these very aspects that we are proposing to ask the Tribunal to refer the following questions of law which, in our opinion, do arise out of the order of the Income Tax Appellate Tribunal. We, accordingly, direct the Tribunal to state the case and refer the following questions of law for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax

Appellate Tribunal was right in law, for the purpose of Section 7(1) of the Wealth-tax Act, in determining the assessee''s interest in the partnership firm by adopting the fair market value of the assets in question, namely, the cinema building, on the income mobilisation basis instead of the land and building method adopted by the Wealth-tax Officer ?

(2) If the answer to the above question is in the negative and against the assessee, then what ought to be the correct fair market value of the assets in question ?

2. The application is, accordingly, allowed, but there will be no order as to costs.

