(1991) 08 PAT CK 0028

In the Patna High Court

Case No : Taxation Case Nos. 331 and 332 of 1980

Commissioner of Wealth Tax — APPELLANT

Vs

Smt. Sudha Devi Khaitan — RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0028

Judgement

G.C. Bharuka, J.—These tax cases arise out of references made by the Income Tax Appellate Tribunal u/s 27(1) of the Wealth-tax Act, 1957. These two tax cases pertain to the assessment years 1975-76 and 1976-77. The common question of law involved in these cases is as follows :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in Holding that the value of factory shed and factory office building cannot be deducted to the extent of Rs. 2,49,021 and Rs. 31,023, respectively, from the total assets of the firm while allowing exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957, in the case of the assessee relating to the assessment year 1974-75 ?"

2. The facts in short are thus. The assessee is an individual. The relevant valuation date falls on March 31, of each year. The assessee invested a sum of Rs. 1,54,920 and Rs. 1,72,708 as capital in the firm and claimed exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957, on the ground that the firm of which the assessee was a partner was an industrial undertaking. The Wealth-tax Officer, however, partly negatived the claim on the ground that the interest of the assessee in the assets of the firm forming part of an industrial undertaking will not include the value of any land or building or any right or interest in any land or building belonging to the firm. The assessee preferred an appeal to the Appellate Assistant Commissioner who was pleased to allow the claim of the assessee. Aggrieved by this order, the Wealth-tax Officer appealed to the Appellate Tribunal but the Tribunal, following its earlier order, dismissed the Departmental appeal, thus upholding the claim of the assessee.

3. Admittedly, the question of law at hand has been recently answered by a Bench of this court in the case of Commissioner of Wealth Tax Vs. Dungarmal Tainwala, (Taxation Case No. 20 of 1980 with Taxation Cases Nos. 98 to 100 of 1984) disposed of on November 14, 1990. The following questions of law were involved in those cases (at page 446) :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the value of factory shed and factory office building cannot be deducted to the extent of Rs. 2,49,021 and Rs. 31,023, respectively, from the total assets of the firm while allowing exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957, in the case of the assessee relating to the assessment year 1974-75 ?

Whether the exemption mentioned in Section 5(1)(xxxii) of the Wealth-tax Act, 1957, extended to the land and building forming part of an industrial undertaking pertaining to the firm ?"

4. This court, on an elaborate consideration of the questions, by referring to the different authorities, has answered the said questions in favour of the assessee and against the Department.

5. Relying on the aforesaid judgment of this court, it has to be held that the question referred in the present case has to be answered in the affirmative, i.e., in favour of the assessee and against the Department. In the circumstances of the case, there shall be no order as to costs.

6. Let a copy of this judgment be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, Patna Bench, Patna, in terms of Section 260 of the Income Tax Act, 1961.

B.C. Basak, C.J.

7. I agree.

