(1994) 04 GAU CK 0016

In the Gauhati High Court

Case No : Wealth-tax Reference No. 6 of 1989

Commissioner of Wealth-tax APPELLANT

Vs

Surrya Kumar Sharma RESPONDENT

Date of Decision : 25-04-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 5(1)

Citation : (1996) 218 ITR 67

Hon'ble Judges : S.N. Phukan, Acting C.J.;A.K. Patnaik, J

Bench : Division Bench

Advocate : D.K. Talukdar, for the Appellant; None, for the Respondent

Judgement

A.K. Patnaik, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957 (for short, "the Act"), by the Appellate Tribunal, Gauhati Bench, Guwahati, to this court. After receiving the statement of the case from the Tribunal, on December 16, 1992, notices were issued to the parties for hearing of the case. Pursuant to the said notices, Mr. D.K. Talukdar, learned standing counsel of the Income Tax Department, appeared on behalf of the applicant, but none appeared on behalf of the respondent.

2. The brief facts of the case as stated in the statement of the case drawn up by the Tribunal are that for the assessment year 1979-80, the Wealth-tax Officer included in the net wealth of the respondent-assessee his interest as partner in the firm, Kaliapani T. E., after computing the same under Rule 2 of the Wealth-tax Rules, 1957. The respondent-assessee challenged the order of assessment before the Appellate Assistant Commissioner contending that the exemption u/s 5 of the Act had not been allowed in respect of his share in the properties in the firm. The Appellate Assistant Commissioner found that the computation of the interest of the assessee in the firm by the Wealth-tax Officer was not in accordance with the Wealth-tax Rules, 1957, and directed that the exemption u/s 5(1)(iv) of the Act should be allowed to the firm at the stage of determination of net wealth before the balance was distributed amongst the partners. The

Appellate Assistant Commissioner directed the Wealth-tax Officer to redetermine the market value of the interest of the assessee in the firm. The said order of the Appellate Assistant Commissioner was challenged by the respondent-assessee before the Appellate Tribunal and the assessee contended that the Appellate Assistant Commissioner erred in directing that the assessee''s interest in the firm should be computed after allowing the exemption u/s 5(1)(iv) of the Act at the stage of determination of the net wealth of the firm before allocation to the partners. The Tribunal, inter alia, observed that there was a decision of the Appellate Tribunal (Special Bench) in the case of L. Gulabchand Jabak 1 SOT 613, in which a similar claim of the assessee was allowed and set aside the orders of the authorities below to enable the Wealth-tax Officer to bring the basic facts and materials on record in the light of the directions given in the said case and to dispose of the matter afresh after giving the assessee an opportunity of being heard. Thereafter, at the instance of the Revenue, the Appellate Tribunal referred to this court for its opinion, the following question of law which is said to have arisen out of the aforesaid order :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in restoring the matter to the Wealth-tax Officer with the direction to decide the matter afresh keeping in view the decision of the Special Bench in the case of L. Gulabchand Jabak 1 SOT 613 when such decision of the Special Bench is not related to the subject-matter of appeal constituted the grounds of appeal taken before the Tribunal ?"

3. Having perused the order of the Wealth-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal in W. T. A. No. 109/(Gau) of 1986 which have been annexed to the statement of the case, we are of the view that the question of law referred to us quoted above has not been correctly worded and we reframe the question of law as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in restoring the matter to the Wealth-tax Officer to decide the matter afresh keeping in view the decision of the Special Bench of the Tribunal in the case of L. Gulabchand Jabak 1 SOT 613 in which the claim of the assessee was allowed ?"

4. In the case of Commissioner of Wealth-tax Vs. Tarachand Agarwalla, this court held that the deduction u/s 5(1)(iv) of the Act should be allowed in the hands of the assessee-partner and not in the hands of the firm. Following the aforesaid decision in the case of Commissioner of Wealth-tax Vs. Tarachand Agarwalla, this court held in the judgment dated November 6, 1992, in Wealth-tax Reference No. 4 of 1988 that the deduction u/s 5(1)(iv) of the Act in the case of agricultural land standing in the name of the firm is also to be allowed in the hands of the assessee-partner in respect of his share in the said land. We have also delivered judgment on March 31, 1994, in Wealth-tax Reference No. 19 of 1989 (Commissioner of Wealth-tax Vs. Parsuram Chouthmal (HUF), holding that a firm has no legal personality of its own and that the properties owned by the firm

actually belong to the partners constituting the firm to the extent of their respective shares therein and the deduction u/s 5(1)(iv) of the Act is to be allowed to each of the partners of the firm to the extent admissible under the proviso to Section 5(1)(iv) of the Act in respect of their shares in the house properties standing in the name of the firm. Though a copy of the order of the Tribunal (Special Bench) in the case of L. Gulabchand Jabak (1 SOT 613) has not been annexed to the statement of the case, it appears that in the said case the Tribunal has allowed the claim of the assessee u/s 5(1) of the Act in respect of the assessee''s share in the immovable properties standing in the name of the firm consistent with the law as stated by this court in the aforesaid three decisions. Since the orders of the Wealth-tax Officer and the Appellate Assistant Commissioner in the present case were not in accordance with the law as stated above and since the basic facts and materials relating to the claim for exemption u/s 5(1)(iv) of the Act had not been brought on record, we are of the opinion that the Tribunal was justified on the facts and in the circumstances of the case to restore the matter to the Wealth-tax Officer with the direction to decide the matter afresh keeping in view the decision of the Special Bench in the case of L. Gulabchand Jabak 1 SOT 613 in which the claim of the assessee was allowed.

5. Accordingly, the question referred to us and as reframed by us is answered in the affirmative, i.e., against the Revenue and in favour of the assessee. There shall be no order as to costs.

