(1995) 04 MAD CK 0104

In the Madras High Court

Case No : Tax Cases No''s. 1009 and 1010 of 1982

Commissioner of Wealth Tax — APPELLANT

Vs

V.M. Ramanathan — RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:
Income Tax Act, 1961 — Section 28
Wealth Tax Act, 1957 — Section 5(1)

Citation : (1996) 217 ITR 535

Hon'ble Judges : S.M. Ali Mohamed, J;Mishra, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Mishra, J.—The questions referred to this Court are :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the deduction under s. 5(1)(iva) of the WT Act, 1957, is to be allowed in full in the hands of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the deduction under s. 5(1)(iva) of the WT Act, 1957, is to be allowed in the hands of the assessee who is only a partner in the firm which owns the agricultural land without having regard to the provisions of ss. 14 and 15 of the Partnership Act, whereunder no partner can point to any part of the assets of the partners or any allotment of share in such property as belonging to him ?"

2. The legal position in this behalf has been considered by a Bench of this Court, of which one of us (Mishra J.) was a member, in R. Venkatavaradha Reddiar Vs. Commissioner of Income Tax, . The judicial consensus as noticed by the Bench are as follows :

"(1) A firm has no legal existence and as such it cannot hold any property;

(2) It is the partners, who own the partnership property as such;

(3) The partners alone should have the benefit of the exemption under s. 5(1)(iva), when their individual assessments are taken up to the extent of their respective shares in the net wealth of the partnership firm;

(4) The mere fact that a partner cannot claim to be entitled to any portion of the property owned by a firm as exclusively belonging to him will not completely disentitle him from seeking the benefit of exemption under s. 5(1)(iva) of the Act, so long as he is the owner of the house property even though as a partner in a firm;

(5) For the purposes of the exemption under s. 5(1)(iv), it is not necessary that the partner should be able to say that the property or any specific part thereof exclusively belongs to him."

3. Learned counsel for the Revenue has, however, pointed out that the assessee who is a partner in a coffee estate has valued only the interest in the partnership and it is not known whether for some other assets, the assessee claimed exemption without adverting to the limit as prescribed under s. 5(1)(iva) of the WT Act and a proper realisation of tax from the assessee is not possible.

4. We have gone through the records which are made available to us. We have, however, not found any foundational fact for the examination whether in view of s. 5(1)(iva) the assessee has been rightly allowed the exemption in respect of the assessee''s share in the agricultural land of the firm to the extent of his share. Since there are no foundational facts, it is not possible to enter into this controversy. Answer to the questions referred to us, however, is available in the judgment of this Court in Venkatavaradha Reddiar''s case (supra). The reference is answered accordingly.