(2005) 03 AHC CK 0003

In the Allahabad High Court

Case No : WT Reference No. 189 Of 1993 22 March 2005

CWT, Agra APPELLANT

Vs

Shri Bhagwan Agarwal and Sons RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Citation : (2006) 154 TAXMAN 265

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Appellant;

Judgement

The Income Tax Appellate Tribunal, Delhi, has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as ''the Act''), for opinion to this Court:

"Whether the ITAT is legally correct in holding that the assessee was entitled to exemption u/s 5(l)(iv) of the Wealth Tax Act, 1957, in respect of his share in the value of immovable properties which belonged to the firm of which the assessee is a partner ?"

2. The present reference relates to the assessment years 1983-84 to 1986-87.

3. The respondent-assessee is a partner in a firm which owns a cinema building and claimed exemption u/s 5(1)(iv) of the Act. The claim was not entertained by the assessing officer on the ground that the property in question was owned by the firm and not by the partners of the firm and as such they were not entitled for exemption u/s 5(1)(iv) of the Act in respect of the share in immovable property owned by the firm. The Commissioner of Wealth-Tax (Appeals), however, allowed the claim of the respondent-assessee, which order has been affirmed by the Tribunal.

4. We have heard Sri A.N. Mahajan, learned counsel for the revenue. Nobody has appeared on behalf of the respondent-assessee.

5. This court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, has held that exemption u/s 5(1)(iv) of the Act is available in respect of a house or part of the house. It further held that the house is a dwelling place where people reside and a cinema building cannot, by any stretch of imagination, be termed as a building for human habitation or a dwelling or a home and a cinema hall is not a house at all. Therefore, exemption in respect of the share in cinema building owned by the firm is available u/s 5(1)(iv) of the Act. ,

6. Respectfully following the aforesaid decision, we answer the question of law referred to us in the negative, i.e., in favour of the revenue and against the assessee. However, the parties shall bear their own costs.